

Space/Craft Worldwide, Inc. v Harlequin Design, Inc.

2024 NY Slip Op 34426(U)

December 11, 2024

Supreme Court, New York County

Docket Number: Index No. 655563/2024

Judge: Margaret A. Chan

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SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK: COMMERCIAL DIVISION PART 49M

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SPACE/CRAFT WORLDWIDE, INC.	INDEX NO.	<u>655563/2024</u>
Plaintiff,	MOTION DATE	<u>12/05/2024,</u> <u>12/05/2024</u>
- v -	MOTION SEQ. NO.	<u>001, 002</u>
HARLEQUIN DESIGN INC.,		
Defendant.	DECISION + ORDER ON MOTION	

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HON. MARGARET A. CHAN:

The following e-filed documents, listed by NYSCEF document number (MS001) 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 27, 28, 29, 30, 32 were read on this motion to/for INJUNCTION/RESTRAINING ORDER.

The following e-filed documents, listed by NYSCEF document number (MS002) 19, 20, 21, 22, 23, 24, 25, 26, 33, 34, 35 were read on this motion to/for STRIKE PLEADINGS.

Plaintiff Space/Craft Worldwide, Inc. (plaintiff) brings this action against defendant Harlequin Design Inc. (defendant), asserting claims for, *inter alia*, tortious interference, misappropriation of trade secrets, unfair competition, and unjust enrichment (NYSCEF # 1 – Complaint or compl). Before the court are two motions. In Motion Sequence 001 (MS001), plaintiff moves, by order to show cause, for an order enjoining defendant from any further use of plaintiff’s purported trade secrets and/or confidential information, and for expedited discovery (NYSCEF # 16). And in Motion Sequence 002 (MS002), defendant moves, by order to show cause, for an order pursuant to CPLR 3024(b) striking certain allegations contained in the Complaint (NYSCEF #24). Both motions are opposed. The court held oral arguments on both motions on December 5, 2024. For the following reasons, as well as those articulated during the December 5 hearing, both motions are denied.

Background¹

Plaintiff is a Long Island-based corporation founded in 2011 that operates in the retail-display industry (compl ¶ 10; *see also* NYSCEF # 4 – Sivilli decl ¶¶ 3-4). It

¹ The following facts are drawn from the materials submitted in connection with this motion (*see* NYSCEF #s 4-12), as well as the allegations set forth in the Complaint.

employs approximately 150 employees at its Long Island production facility (compl ¶ 11; Sivilli decl ¶ 3). According to plaintiff's CEO and CFO, Jack Sivilli, plaintiff has developed a "volume of trade secrets and highly confidential and sensitive business information," including (1) "historical pricing information for all of [plaintiff's] past projects," (2) "specific financial information for past and current client projects," (3) "detailed plans for 'pitching' new business to" existing and potential clients, (4) identities and relationships of contacts with clients and vendors, (5) financial details of ongoing relationships with clients and vendors, and (6) "highly negotiated and proprietary rates" for several clients (Sivilli decl ¶¶ 4-5). Sivilli explains that this data is stored in plaintiff's "proprietary operating system called Mission Control," whose access is "strictly limited to a few highly select individuals" (*id.* ¶ 6).

Defendant is a United Kingdom-based company that operates in the same business as plaintiff and has recently entered into the United States market (compl ¶¶ 3, 12; Sivilli decl ¶¶ 11-12). Defendant has since attempted to recruit plaintiff's employees with lucrative job offers (including increased compensation) (*see* compl ¶ 13; Sivilli decl ¶ 13). Although most of its employees have rebuked defendant's advances, one employee, Jaime Reinado (Reinado) "took the bait" and accepted employment with defendant (*see* compl ¶¶ 13-14; Sivilli decl ¶¶ 13-14). It is Reinado's employment with defendant that now underlies each of the claims asserted by plaintiff (*see* compl ¶¶ 15-40; Sivilli decl ¶¶ 18-28).²

Reinado had been plaintiff's employee for over 10 years at the time of his resignation (compl ¶ 17; Sivilli decl ¶ 15). During the course of his employment, plaintiff alleges, it entrusted plaintiff with trade secret and confidential business information (*see* compl ¶ 16; Sivilli decl ¶ 6). For that reasons, plaintiff had Reinado enter into an Employee Covenants and Non-Disclosure Agreement, dated August 7, 2017 (the Employee Agreement), pursuant to which Reinado agreed, in relevant part, that

the services Employee provides to the Company are of a special, unique, extraordinary and intellectual character and that Employee's employment with the Company places Employee in a position of confidence and trust with the clients, customers, vendors, employees, contractors, referral partners and affiliates of the Company . . .

(compl ¶ 15; Sivilli decl ¶ 7; NYSCEF # 9). Reinado also agreed that he would not

during [his] employment with the Company or at any time thereafter, except as reasonably required in the conduct of the Company's business, or as authorized by the Company in writing, use, publish, disclose, appropriate or communicate directly or indirectly, any

² Paragraphs 31 through 40 of the complaint are labeled as paragraphs 1 through 10. This appears to be a typographical error.

information which Employee in any way has acquired or may acquire during, or by reason of, retention with the Company

(compl ¶ 15; Sivilli decl ¶ 7; NYSCEF # 9 ¶ 1).

As alleged, Reinado's departure "wreaked havoc" for plaintiff (*see* Sivilli decl ¶¶ 14-18). In particular, although Reinado had been with plaintiff for 10 years, he only gave plaintiff three days' notice of his departure from the company (compl ¶ 17; Sivilli decl ¶ 15). This purportedly caused plaintiff's management team concern, and thus plaintiff's management met with Reinado to understand the basis for his abrupt departure and determine if he could stay on for a longer period to assist with the company's transition efforts (*see* compl ¶ 18; Sivilli decl ¶ 16). During the meeting, Reinado stated that he was leaving to "start his own business," and he declined plaintiff's request that he stay longer than three days (compl ¶ 19; Sivilli decl ¶ 17). Contrary to his representations, however, it soon came to light that Reinado was, in fact, leaving plaintiff to work for defendant (compl ¶ 20).

Plaintiff avers that, after Reinado's departures, its IT department discovered that Reinado had downloaded at least three files from the company's computer system onto an external drive and deleted them permanently (compl ¶ 21; Sivilli decl ¶¶ 19-22). The specific files identified were titled "PRICES PRINT.XLSX," "SUPPLIERS 8.2.24 UPDATE 6," and SUPPLIERS 8.2.24" (Sivilli decl ¶ 20). Plaintiff characterizes these "critical" documents as "highly confidential" and claims they contain "trade secrets and proprietary data including but not limited to [plaintiff's] confidential pricing arrangements with its suppliers" (compl ¶ 21; Sivilli decl ¶¶ 19-20). Plaintiff further alleges that Reinado acted to "maximize the damage to [plaintiff] for the benefit of" defendant (compl ¶ 20). For its part, defendant denies that it has ever asked Reinado to provide defendant with any data or information from plaintiff (NYSCEF # 29 – Brown aff ¶ 4).

Upon learning of the missing files, plaintiff's counsel sent separate letters, dated September 6, 2024, to defendant and Reinado identifying the files that were taken and demanding their return (*see* compl ¶ 23; Sivilli decl ¶ 25; NYSCEF #s 5-6). Defendant's outside counsel responded, by letter dated September 17, 2024, to plaintiff's letter to Reinado, indicating that there was no assertion that Reinado had access to trade secrets and that, even if Reinado did have access to such information, defendant was not using, viewing, or bringing that information to its facility (*see* compl ¶¶ 24-26; Sivilli decl ¶¶ 27-28; NYSCEF # 7).

Based on this alleged misconduct, plaintiff commenced this action against defendant on October 21, 2024 (NYSCEF # 1). Plaintiff asserts claims for, *inter alia*, tortious interference with contract, misappropriation of trade secrets, unfair competition, and unjust enrichment (compl ¶¶ 29-40). The next day, on October 22, 2024, plaintiff filed its motion, by Order to Show Cause, seeking to enjoin defendant from using its purported trade secrets and confidential information (NYSCEF # 16).

Plaintiff's Motion for a Preliminary Injunction and Expedite Discovery (MS001)

In seeking a preliminary injunction, plaintiff relies on the fact that non-party Reinado purportedly downloaded plaintiff's "highly confidential and proprietary business" information onto an external drive prior to starting his employment with defendant (NYSCEF # 13 – PI MOL at 1-2). Relying solely on this fact and the terms of the Employee Agreement, plaintiff maintains that (1) it has established a likelihood of success on the merits, (2) there would be irreparable harm in the absence of an injunction, and (3) the balance of equities tips in its favor so as to warrant an injunction against defendant, Reinado's new employer (*see id.* at 5-9).

At the outset, plaintiff first addresses its likelihood of success on the merits on its four primary claims against defendant (PI MOL at 5-8). In support, plaintiff relies on the following allegations related to Reinado:

- Reinado was required to maintain trade secrets and confidential/proprietary business information as confidential.
- Reinado abruptly left his job with only three days' notice and falsely indicated he was leaving to start his own business when, in fact, he was going to work for defendant.
- Defendant purportedly is aware of Reinado's contract with plaintiff.
- Plaintiff discovered that several files purportedly containing trade secrets had been downloaded from Reinado's computer on to an external drive prior to Reinado's departure, and those files were also deleted from plaintiff's computer network.

(*id.* at 5). Although the Sivilli Declaration identifies the specific files that were downloaded, there is no explanation in plaintiff's application, beyond plaintiff's say-so, regarding *how* (if at all) these documents constitute trade secrets or proprietary information (*see generally id.* at 2-5).

Plaintiff continues by briefly describing how it has established a likelihood of success on a claim-by-claim basis. Plaintiff first contends addresses the likelihood of success on its tortious interference claim (PI MOL at 5-6). Specifically, plaintiff argues, the evidence set forth in its application is "insurmountable" that Reinado breached his contract by downloading and then deleting plaintiff's files, and that defendant had knowledge of Reinado's agreement with plaintiff and intentionally procured its breach (*id.* at 6). Turning to its misappropriation of trade secrets claim, plaintiff baldly claims that it has already demonstrated that "it possessed trade secrets as defined by New York law" and therefore it is "obvious" that plaintiff has established a likelihood of success on this claim (*id.* at 6-7).

Plaintiff next addresses its unfair competition claim (PI MOL at 7). Plaintiff avers that it has established a likelihood of success on this claim because “[p]laintiff cannot even use its own property because it was stolen,” and that “under any reasonable view of New York law,” defendant is unfairly competing with plaintiff (*id.*). Finally, with regard to its unjust enrichment claim, plaintiff solely maintains, without further explanation, that “it is difficult to imagine a set of circumstances where Plaintiff *would not* prevail on this claim” (*id.* at 7-8 [emphasis in original]).

As for irreparable harm, plaintiff argues that its “harm intensifies each day that [d]efendant is using its trade secret” (PI MOL at 8). And to address the balancing of the equities, plaintiff states that there is “literally *no harm* to [d]efendant” by an injunction, while plaintiff faces “an enormous burden in the absence of an injunction” (*id.* at 9 [emphasis in original]). Notably, plaintiff also asks for limited expedited discovery to determine the extent of defendant’s purported wrongdoing. But it devotes almost no space in its brief to explain why expedited discovery is necessary in this action.

Defendant opposes plaintiff’s motion, arguing that plaintiff failed to establish any of the three prongs of the preliminary injunction analysis (NYSCEF # 30 – PI Opp at 4-6). Defendant starts with plaintiff’s likelihood of success (*id.* at 7-10). To begin, defendant contends that plaintiff has failed to identify any conduct by *defendant* that would establish a likelihood of success on its tortious interference or misappropriation claims, and that, in any event, certain key facts, such as defendant’s purported knowledge of Reinado’s employment agreement, are sharply disputed (*id.* at 7-8). Defendant further explains that, more fundamentally, plaintiff has failed to offer any support for its contention that defendant procured Reinado’s breach of his agreement or that any information downloaded by Reinado constituted protected “trade secrets” (*id.* at 8-9).

Defendant continues that plaintiff has failed to establish that any “trade secret” was misappropriated insofar as plaintiff is claiming that Reinado downloaded customer lists that are readily discoverable through public sources (PI Opp at 9). Finally, addressing plaintiff’s unfair competition and unjust enrichment claim, defendant contends that it disputes the facts and therefore no likelihood of success has been established (*id.* at 9-10).

Turning to irreparable harm, defendant reiterates that plaintiff failed to establish the nature of the purportedly misappropriated confidential information, and thus any potential irreparable harm is speculative (PI Opp at 10). Regardless, defendant continues, plaintiff has failed to establish how, if at all, it is suffering harm other than economic loss, which does not constitute irreparable harm (*id.* at 10-11). Finally, with regard to the balance of the equities, defendant states that plaintiff has come to the court with “unclean hands” by making baseless accusations of criminal conduct and unfair competition (*id.* at 11). Defendant does not otherwise meaningfully grapple with this prong of the analysis.

At the end of its opposition, defendant briefly offers an argument in opposition to plaintiff's request for expedited discovery, relying on the concept of "priority of discovery in New York" (*see* Opp at 1-12). Specifically, defendant claims that the court should "maintain [d]efendant's priority in serving notice and deny the [p]laintiff's motion" (*id.*).

Defendant's Motion to Strike (MS002)

In addition to opposing plaintiff's application, defendant has moved, by order to show cause, for an order striking certain scandalous and prejudicial allegations in the Complaint (NYSCEF # 24). Specifically, defendant seeks to strike the allegations found in paragraphs 1, 3, 4, 13, 14, and 27 of the Complaint (*see* NYSCEF # 20 ¶ 4). Defendant takes issue with the fact that, among other things, plaintiff has alleged that (1) this action arises from a "plot" by defendant, (2) defendant has engaged in "unfair and illegal business practices," (3) defendant "essentially bribed" plaintiff's employee, (4) numerous employees have reported attempts by defendant to recruit them through offers to increase their salaries, (5) one employee "took the bait and delivered the goods," and (6) defendant has "something to hide" (*id.*).

To support its motion, defendant contends that the language used by plaintiff in its complaint is immaterial and reproachful and has caused, and will cause, harm to defendant's business (NYSCEF # 23 – Strike MOL at 7-8). Defendant continues that the at-issue allegations are not relevant because plaintiff has failed to offer any evidence of a plot by defendant, criminal conduct, or bribery (*id.* at 8). Defendant claims that these allegations have resulted in an article about the parties' dispute being published in the New York Post, and that its clients are now shying away from defendant (which has resulted in an estimated \$2 million in lost business) (NYSCEF # 20. ¶¶ 6-8; *see also* NYSCEF # 22 ¶ 11).

Plaintiff, in response, devotes a fair amount of its opposition to merely reiterating certain positions in support of its motion for a preliminary injunction (NYSCEF # 33 – Strike Opp at 1-3). When specifically addressing defendant's motion, plaintiff contends that it is "self-evident" that each of the allegations challenged by defendant are relevant to the claims in the Complaint because they arise from its causes of action asserted therein (*id.* at 6). Plaintiff further contends that it is also "self-evident" that none of the statements are prejudicial or scandalous, and that the cases cited by defendant in support of this position are entirely distinguishable (*see id.*)

Discussion

Before the court are two motions: (1) plaintiff's motion for a preliminary injunction and expedited discovery, and (2) defendant's motion to strike certain allegations in the Complaint. The court addresses these motions in turn.

I. Plaintiff's Motion for a Preliminary Injunction and Expedited Discovery

In MS001, plaintiff moves for a preliminary injunction against defendant. But as explained below, plaintiff application fails to get out of the starting gate because it has not established a likelihood of success on any of its four causes of action.

A preliminary injunction is a drastic remedy, which should not be granted unless the movant demonstrates a “clear right” to such relief (*City of New York v 330 Cont., LLC*, 60 AD3d 226, 234 [1st Dept 2009]). To be entitled to a preliminary injunction, a party must establish three elements: (1) a likelihood of success on the merits, (2) irreparable injury if the preliminary injunction is withheld, and (3) a balance of equities tipping in its favor (*1234 Broadway LLC v West Side SRO Law Project, Goddard Riverside Community Ctr.*, 86 AD3d 18, 23 [1st Dept 2011], citing *Doe v Axelrod*, 73 NY2d 748 [1988]). If any one of these three requirements is not satisfied, the motion must be denied (*Faberge Intern., Inc. v Di Pino*, 109 AD2d 235, 240 [1st Dept 1985]). Moreover, “[p]roof establishing these [requirements] must be by affidavit and other competent proof, with evidentiary detail” (*Scotto v Mei*, 219 AD2d 181, 182 [1st Dept 1996]). Whether to grant a preliminary injunction is “committed to the sound discretion of the motion court” (*Harris v Patients Med., P.C.*, 169 AD3d 433, 434 [1st Dept 2019]).

When determining whether a party has established a likelihood of success, “the threshold inquiry is whether the proponent has tendered sufficient evidence demonstrating ultimate success in the underlying action” (*1234 Broadway LLC*, 86 AD3d at 23). Although the movant “need not tender conclusive proof beyond any factual dispute,” a preliminary injunction does require the movant to establish “a clear right to that relief under the law and the undisputed facts upon the moving papers” (*id.*, quoting *Gagnon Bus Co., Inc. v Vallo Transp., Ltd.*, 13 AD3d 334, 335 [2d Dept 2004]). Put differently, a plaintiff seeking a preliminary injunction must establish its likelihood of success on the merits “by clear and convincing evidence” (*see Marilyn Model Mgt., Inc. v Saathoff*, 181 AD3d 522, 523 [1st Dept 2020]).

Here, in support of its motion, plaintiff maintains—in largely conclusory fashion—that it has established a likelihood of success on each of its four causes of action against defendant: (1) tortious interference with the Employee Agreement; (2) misappropriation of trade secrets; (3) unfair competition; and (4) unjust enrichment. Each of these causes of action is largely premised on plaintiff's contention that Reinado, in breach of the Employee Agreement, misappropriated purportedly confidential information/trade secrets from plaintiff's computer system for the benefit of defendant (*see* compl ¶¶ 14-21; Sivilli decl ¶¶ 19-22). However, as will be discussed, because plaintiff has failed to establish, through clear and convincing evidence, that any of the information downloaded by Reinado constitutes proprietary information or protected trade secrets, or that defendant directed

Reinado to misappropriate these files, it has failed to establish a likelihood of success on any of its claims.

A. Likelihood of Success on Claim for Tortious Interference with Contract

The first cause of action asserted by plaintiff is for tortious interference with the Employee Agreement. To establish a claim for tortious interference of contract, plaintiff must prove “the existence of a valid contract between the plaintiff and a third party, defendant’s knowledge of that contract, defendant’s intentional procurement of the third party’s breach of contract without justification, actual breach and damages” (*see Vigoda v DCA Prods. Plus*, 293 AD2d 265, 266 [1st Dept 2002]). Here, the Employee Agreement is the contract at the heart of plaintiff’s tortious interference claim. That agreement, as relevant here, restricts Reinado’s ability to “use, publish, disclose, appropriate or communicate directly or indirectly, any information which Employee in any way has acquired or may acquire during, or by reason of, retention with the Company” (NYSCEF # 9 ¶ 1). The Employee Agreement also prohibits Reinado from “disclos[ing] to anyone any confidential information or trade secret of the Company” (*see id.*).

Despite this restriction, plaintiff avers, Reinado downloaded three purportedly confidential files—titled “PRICES PRINT.XLSX,” “SUPPLIERS 8.2.24 UPDATE 6,” and “SUPPLIERS 8.2.24” (Sivilli decl ¶ 20)—on to an external drive and then deleted them from plaintiff’s system (Sivilli decl ¶¶ 19-20). In plaintiff’s view, Reinado’s conduct is particularly damaging because these documents contain “trade secrets and proprietary data including but not limited to [plaintiff’s] confidential pricing arrangements with its suppliers” that would cause plaintiff serious harm in the hands of a competitor (*see* compl ¶ 21; Sivilli decl ¶¶ 19-20; *see also* MOL at 6). Plaintiff’s attempt to establish a likelihood of success on the merits, however, fails for two reasons.

First, even assuming Reinado did breach the Employee Agreement, plaintiff has not established, beyond conjecture, how, if at all, *defendant* intentionally procured plaintiff’s purported breach. In an effort to claim that defendant procured Reinado’s breach, plaintiff appears to insinuate that, because defendant referenced the Employee Agreement while responding, on behalf of Reinado, to plaintiff’s letter concerning Reinado’s purported breaching conduct, it must have caused Reinado to engage in the complained-of conduct (*see* Sivilli decl ¶¶ 9-10). Defendant’s letter, however, does not support a conclusion or even inference that defendant was aware of the Employee Agreement at the time of Reinado’s breach, or that it directed, or otherwise took some sort of action causing, Reinado to breach his Employee Agreement (*see Kind Operations Inc. v AUA Private Equity Partners, LLC*, 195 AD3d 446, 446 [1st Dept 2021] [holding that complaint failed to state cause of action for tortious interference with contract where complaint failed to allege any conduct on the part of the individual defendants that would establish their intentional and improper procurement of a breach of the contract without

justification]; *Delfino Insulation Co., Inc. v Jaworowski*, 55 AD3d 654, 656 [2d Dept 2008] [dismissing tortious interference claim where defendant had no knowledge of the alleged agreement with plaintiff and thus could not have intentionally procured its breach). Rather, defendant's response simply shows that, by the time plaintiff had raised concerns with defendant and Reinado, it had reviewed the at-issue Employee Agreement and developed its own position (regardless of whether correct or not) about the propriety of Reinado's conduct. Of course, plaintiff may want the court to infer intentionality from Reinado abrupt departure from his employment with plaintiff, as well as Reinado lying about the reason for his decision. But those allegations simply do not establish, let alone by clear and convincing evidence, that defendant was aware of the Employee Agreement or otherwise intentionally procured its alleged breach.

Second, plaintiff has also failed to demonstrate how any of the three files that Reinado downloaded fall within the definition of confidential information under the Employee Agreement or how they otherwise constitute trade secrets.³ In essence, plaintiff is asking the court to take its word for it on the issue of confidentiality and trade secrets. Indeed, plaintiff largely relies on its own say-so to claim that the downloaded files constitute proprietary information and protected trade secrets. To that end, it repeatedly and baldly claims that the files contain "highly confidential" information without providing any meaningful details about these files' contents (*see e.g.* Sivilli decl ¶ 19; compl ¶¶ 16, 38, 40).

The only time plaintiff gets into specifics about the purportedly misappropriated files' contents is when it asserts that at least one of the taken documents contain pricing information regarding certain of its suppliers (*see* Sivilli decl ¶ 19). But that is not enough to support this tortious interference claim. Indeed, generally speaking, information such as pricing and customer lists are not considered to be trade secrets, particularly where such information is readily ascertainable from sources outside of a company's business (*see Marietta Corp v Fairhurst*, 301 AD2d 734, 738 [3d Dept 2003] [trial court erred in adopting "an overly expansive definition of 'trade secret' so as to encompass nearly all confidential business documents; if its focus was on the pricing data and market strategies, such information would not constitute trade secrets"]; *1-800 Postcards, Inc. v AD Die Cutting & Finishing Inc.*, 28 Misc3d 1216[A], at *2 [Sup Ct, NY County, 2010] ["Pricing information and customer lists are generally not considered to be trade secrets"]). Nor does plaintiff explain, for purposes of establishing that

³ Confidential Information or trade secrets under the Employee Agreement is defined as "all proprietary financial, technical, commercial and other information concerning the current and proposed business and affairs of the Company" (NYSCEF # 9 ¶ 1). And more generally, with regard to trade secrets, "New York courts have adopted the trade secret definition set forth in the Restatement (First) of Torts § 757, Comment B, as 'any formula, pattern, device or compilation of information which is used in one's business, and which gives him an opportunity to obtain an advantage over competitors who do not know or use it'" (*Sylmark Holdings Ltd. v Silicone Zone Intern. Ltd.*, 5 Misc 3d 285, 297 [Sup Ct NY County, 2004]).

such pricing information is “confidential information” as defined under the Employee Agreement, how this purportedly misappropriated pricing information is “proprietary.”

To be sure, it is possible that plaintiff’s allegations regarding its confidential information and trade secrets may be sufficient to survive a motion to dismiss. However, when seeking a *preliminary injunction*, plaintiff must meet its burden of establishing the likelihood of success on its claims through clear and convincing evidence. It has not done so here in connection with its tortious interference claim.

B. Likelihood of Success on Claim for Misappropriation of Trade Secrets

The next claim asserted by plaintiff relates to defendant’s purported misappropriation of trade secrets. Again, plaintiff has failed to meet its burden of establishing its likelihood of success on this claim.

“A plaintiff claiming misappropriation of a trade secret must prove: (1) it possessed a trade secret, and (2) defendant is using that trade secret in breach of an agreement, confidence, or duty, or as a result of discovery by improper means” (*E.J. Brooks Co. v Cambridge Sec. Seals*, 31 NY3d 441, 452 [2018]). A trade secret is “any formula, pattern, device or compilation of information which is used in one’s business, and which gives him an opportunity to obtain an advantage over competitors who do not know or use it” (*Sylmark Holdings*, 5 Misc 3d at 297; *see also Ashland Mgt. Inc. v Janien*, 82 NY2d 395, 407 [1993]). There are six factors to consider when evaluating potential trade secrets:

- (1) the extent to which the information is known outside of [the] business;
- (2) the extent to which it is known by employees and others involved in [the] business;
- (3) the extent of measures taken by [the business] to guard the secrecy of the information;
- (4) the value of the information to [the business] and [its] competitors;
- (5) the amount of effort or money expended by [the business] in developing the information;
- (6) the ease or difficulty with which the information could be properly acquired or duplicated by others

(*Ashland*, 82 NY2d at 407).

Here, plaintiff largely relies on conclusory argumentation to maintain that it has established a likelihood of success on this cause of action, contending that it is “obvious” that it has established this claim because it has demonstrated that it possessed a trade secret under New York law (MOL at 6-7). Put bluntly, this argument does nothing to explain on how, if at all, any of the documents purportedly misappropriated by Reinado implicates the six factors outlined by the Court of Appeals in *Ashland*. Again, plaintiff would simply have the court take its word for it without any further explanation. Such a showing falls well below the

“clear and convincing evidence” standard that must be met on a motion for a preliminary injunction.

Yet even if plaintiff had done anything to establish that the three files taken by Reinado constitute trade secrets, plaintiff also utterly fails to explain how, if at all, defendant (rather than Reinado) has used or is using these trade secrets. Plaintiff's failure to do so independently warrants a conclusion that it has failed to establish a likelihood of success on its misappropriation claim (*see, e.g., Marsh USA, Inc. v Alliant Ins. Servs., Inc.*, 49 Misc 3d 1210[A], at *5 [Sup Ct, NY County, 2015] [denying motion for preliminary injunction where plaintiff did not make a showing that defendants were using plaintiff's purported trade secrets]).

In sum, plaintiff has failed to establish a likelihood of success on its misappropriation of trade secrets claim.

C. Likelihood of Success on Claim for Unfair Competition

Plaintiff's application continues by briefly asserting that it has established a likelihood of success on its unfair competition (MOL at 7). New York recognizes two theories of common-law unfair competition: “palming off,” which is not at issue here, and misappropriation (*ITC Ltd. v Punchgini, Inc.*, 9 NY3d 467, 476 [2007]). “An unfair competition claim involving misappropriation usually concerns the taking and use of the plaintiff's property to compete against the plaintiff's own use of the same property” (*id.* at 478). Here, as was the issue with its misappropriation claim, plaintiff has failed to establish how, if at all, defendant has taken and used plaintiff's property to compete against it. Rather, in what is a consistently recurring and concerning issue in plaintiff's application, it baldly contends that “under any reasonable view of New York law, [d]efendant is unfairly competing with [d]efendant” (MOL at 7). Without more, plaintiff has failed to establish a likelihood of success on its unfair competition claim, hence this part of its motion is denied.

D. Likelihood of Success on Claim for Unjust Enrichment

The final claim on which plaintiff claims it has established a likelihood of success is its unjust enrichment cause of action. It is well settled that a claim for unjust enrichment requires plaintiff to demonstrate that “(1) defendant was enriched, (2) at plaintiff's expense, and (3) that ‘it is against equity and good conscience to permit [] defendant to retain what is sought to be recovered’” (*see Farina v Bastianich*, 116 AD3d 546, 548 [1st Dept 2014], quoting *Lake Minnewaska Mtn. Houses v Rekis*, 259 AD2d 797 [3d Dept 1999]). Here, in support of this claim, plaintiff baldly states that “it is difficult to imagine a set of circumstances where [p]laintiff would not prevail on this claim” (MOL at 8). There is absolutely no attempt to even explain how, if at all, defendant was enriched, or that such an enrichment was against equity or good conscience. As a result, plaintiff fails to establish a likelihood of success on this claim, and this part of its motion is denied.

E. Request for Expedited Discovery

As part of its OSC, plaintiff also seeks expedited discovery and an order directing defendant to comply with various discovery demands that have been served by plaintiff (NYSCEF # 16). Although plaintiff briefly mentions in its moving papers that it seeks defendant's compliance with "limited discovery demands to determine the extent of [d]efendant's wrongdoing" (MOL at 1), it makes no showing as to why the court should exercise its discretion to order expedited discovery in this matter (*cf. Kingsland Holdings Ltd. v Synergy Aerospace Corp.*, 2017 WL 1881083, at *2 [Sup Ct, NY County, May 5, 2017] [explaining that "the decision to grant expedited discovery lies within the discretion of the court" and in turn denying plaintiff's application because it "failed to demonstrate that the discovery sought is material and necessary to its application for preliminary injunction"]). Accordingly, plaintiff's application for expedited discovery is denied.

* * *

In conclusion, plaintiff's motion (MS001) is denied. plaintiff has failed to establish a likelihood of success on any of its claims against defendant or that expedited discovery in its matter is warranted.

II. Defendant's Motion to Strike Allegations

In MS002, Defendant moves to strike Paragraphs 1, 3, 4, 13, 14, and 27 of the complaint (*see* NYSCEF # 20). Those paragraphs make the following allegations:

- Paragraph 1: "This is an action for: (i) tortious interference with contract; (ii) unfair competition; and (iii) theft of trade secrets, among other claims, arising from the plot by Defendant Harlequin Design Inc. ('Harlequin' or 'Defendant') to eliminate Space/Craft as a competitor."
- Paragraph 3: "Harlequin, on the other hand, is a London-based company that only recently came into the US market. Rather than compete fairly on an even playing field, however, Harlequin has been engaging in unfair and illegal business practices to displace Space/Craft from its hard-earned position as a market leader."
- Paragraph 4: "The evidence will show that, among other things, Harlequin essentially bribed a Space/Craft employee to misappropriate Space/Craft's trade secrets and highly sensitive and confidential business information and deliver it to Harlequin, which is currently using the information to Space/Craft's detriment and prejudice."

- Paragraph 13: “For the last several months, numerous Space/Craft employees have reported attempts by Harlequin to recruit them by offering to increase their salaries significantly, among other things. Several of these employees suspected, correctly as it turned out, that Harlequin would want more than mere a good day’s work in exchange for the outsized compensation.”
- Paragraph 14: “One such employee, however, took the bait and delivered the goods.”
- Paragraph 27: “A reasonable observer could conclude that Harlequin has something to hide.”

Defendant contends that these paragraphs accuse it of scurrilous behavior and are intended to do nothing more than embarrass defendant in the court of public opinion (Strike MOL at 7). The court disagrees.

CPLR 3024(b) provides that “[a] party may move to strike any scandalous or prejudicial matter unnecessarily inserted in a pleading.” When evaluating such motions, courts must assess whether the at-issue allegations are (1) scandalous and prejudicial, and (2) necessary to establish any element of plaintiff’s causes of actions (*see Ganieva v Black*, 216 AD3d 424, 425 [1st Dept 2023]). Courts should also consider if “the allegations may be relevant” to a plaintiff’s claim or claims “in the context of a more developed record” (*see Parker v Trustees of Spence Sch., Inc.*, 205 AD3d 459, 460 [1st Dept 2022]; *Soumayah v Minnelli*, 41 AD3d 390, 392 [1st Dept 2007] [“the inquiry is whether the purportedly scandalous or prejudicial allegations are relevant to a cause of action”]).

As a preliminary matter, none of the complained-of allegations are scandalous or prejudicial. For instance, although plaintiff may have described defendant’s alleged business practice as “unfair or illegal,” that does not mean, as defendant suggests, that it is being accused of criminal conduct. In fact, such a finding would be necessary to establish at least some of the causes of action asserted by plaintiff. Furthermore, although plaintiff’s assertions that Reinado was “essentially bribed” may be thick on the rhetoric, this allegation does not suggest criminal conduct or otherwise amount to an assertion that is reproachful or impairing a substantial right of defendant (*see e.g. Beverage Mtkg. USA Inc. v. S. Beach Bev. Co.*, 2006 NY Misc LEXIS 3868, at *5-6 [Sup Ct, Nassau County, Feb. 15, 2006] [explaining that “[m]aterial is scandalous if it is both immaterial and reproachful or capable of producing harm without justification” and “prejudicial when it impairs a substantial right of a party or cause harm to the party and is not necessary to the challenged pleading”]; *Callaghan v Oppos Props. Corp.*, 2023 WL 8281096, at *2 [Sup Ct, Queens County, Oct. 25, 2023] [“defendant has failed to demonstrate that the words ‘reckless’ and ‘carelessness,’ which were used solely in paragraph 35 of the pleadings, are either scandalous or prejudicial”]).

In any event, the allegations appear to be relevant to plaintiff's claims. For example, plaintiff's contention that defendant had a "plot," if deemed true, is probative of whether defendant, for example, intentionally caused Reinado to breach the Employee Agreement. Similarly, Paragraph 4, which contains the "essentially bribed" assertion, as a whole, seemingly goes to the issue of whether defendant intentionally procured Reinaldo's breach of the Employee Agreement or otherwise wrongfully misappropriated a trade secret. Hence, because the allegations challenged by defendant have a "tendency in reason to prove the existence of any material fact, i.e., it makes determination of the action more probable or less probable than it would be without the evidence," they are relevant to plaintiff's causes of action and should not be stricken (*see People v Scarola*, 71 NY2d 769, 777 [1988]; *see also Delta Dallas Alpha Corp. v South St. Seaport L.P.*, 2013 WL 6631553, at *7 [Sup Ct, NY County, Dec. 13, 2013] [declining to strike allegations that were "related directly" to plaintiff's claims, "may bear on the same claims," and offered "background introductory information that is sufficiently tied to the claims asserted"], *affd on other grounds* 127 AD3d 419 [1st Dept 2015]).

In sum, defendant's motion to strike is denied

Conclusion

For the foregoing reasons, it is hereby

ORDERED that plaintiff's motion for a preliminary injunction and expedited discovery (MS001) is denied; and it is further

ORDERED that defendant's motion to strike certain allegations in plaintiff's complaint (MS002) is denied; and it is further

ORDERED that within 20 days of the e-filing of this order, defendant shall file an answer or otherwise respond to plaintiff's complaint; and it is further

ORDERED that a preliminary conference shall be held via Microsoft Teams on January 29, 2025, at 10:30 AM or at such other time that the parties shall set with the court's law clerk. Prior to the conference, the parties shall first meet and confer to stipulate to a preliminary conference order, available at <https://www.nycourts.gov/LegacyPDFS/courts/comdiv/NY/PDFs/part49-PC-Order-fillable.pdf>, in lieu of a conference; and it is further

ORDERED that counsel for defendant shall serve a copy of this order with notice of entry upon plaintiff and the Clerk of the Court within ten days of the date of this order.

This constitutes the Decision and Order of the court.

12/11/2024

DATE



MARGARET A. CHAN, J.S.C.

CHECK ONE:

CASE DISPOSED

NON-FINAL DISPOSITION

GRANTED

DENIED

GRANTED IN PART

OTHER

APPLICATION:

SETTLE ORDER

SUBMIT ORDER

CHECK IF APPROPRIATE:

INCLUDES TRANSFER/REASSIGN

FIDUCIARY APPOINTMENT

REFERENCE