

SUPREME COURT OF THE STATE OF NEW YORK — NEW YORK COUNTY

PRESENT: BERNARD J. FRIED PART 60
Justice

FBEM

Sullivan & Cromwell, LLP,

Plaintiff,

- v -

Aaron Brett Charney,

Defendant,

INDEX NO. 600333/2007

MOTION DATE _____

MOTION SEQ. NO. 001

MOTION CAL. NO. _____

The following papers, numbered 1 to _____ were read on this motion to/for _____

Notice of Motion/ Order to Show Cause — Affidavits — Exhibits ...

Answering Affidavits — Exhibits _____

Replying Affidavits _____

PAPERS NUMBERED

Cross-Motion: Yes No

NYS SUPREME COURT
REVIEWED
APR 30 2007
E-FILING DEPT.

This motion has been decided in accordance with the accompanying memorandum decision.

Dated: 4/30/07

B. J. Fried
BERNARD J. FRIED
J.S.C.

Check one: FINAL DISPOSITION NON-FINAL DISPOSITION

Check If appropriate: DO NOT POST REFERENCE

FILED
APR 30 2007
NEW YORK
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MOTION/CASE IS RESPECTFULLY REFERRED TO JUSTICE FOR THE FOLLOWING REASON(S):

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK: COMMERCIAL DIV. PART 60

FBEM

----- X
SULLIVAN & CROMWELL LLP,

Plaintiff,

- against -

Index No. 600333/2007

AARON BRETT CHARNEY,

Defendant.

----- X

APPEARANCES:

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APR 30 2007
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FRIED, J.:

Plaintiff Sullivan & Cromwell LLP ("S&C") moves for a preliminary injunction enjoining Defendant Aaron Brett Charney from: (1) revealing or disclosing the confidences or secrets of S&C's clients; (2) revealing or disclosing materials in any form constituting S&C's attorney work product or proprietary non-public information of S&C; (3) directing Charney to return all documents, files, and other materials in any form referring or relating to S&C's clients, S&C attorney work product,

proprietary non-public information, and the tapes referred to in paragraph two of the complaint he filed in the related pending action, *Charney v Sullivan & Cromwell LLP*, Index No. 100625-2007 (the “related action”).

Charney cross-moves to dismiss S&C’s complaint pursuant to CPLR 3211 (a) (7), arguing that S&C’s claims are flatly contradicted by documentary evidence, are legally insufficient, or have been rendered moot by both voluntary action on his part and interim court orders.

In order to resolve the pending motions in this action, I must refer to the related action, which involves the same parties. On January 16, 2007¹, two weeks before S&C initiated the instant action, Charney, a fourth-year corporate associate at S&C, filed a complaint *pro se* against S&C for discrimination and retaliation based on his sexual orientation. In his rather detailed complaint, Charney described the alleged acts of discrimination and retaliation against him for his having filed an internal complaint on May 1, 2006. Charney’s complaint² named nine clients of the firm, identified certain deals to which he and other attorneys were assigned, and referred to communications and other events related to these clients or deals. The allegations of Charney’s complaint are described in more detail in the memorandum decision and order filed today in the related action, *Sullivan & Cromwell, LLP v Charney*, Index No. 600333-2007.

It is undisputed that Charney was required, as a condition of his employment at S&C, to sign a document, dated September 18, 2003, entitled, “Acknowledgment of Receipt and Agreement”

1

All the events as to which specific dates are given in this memorandum decision happened in 2007, unless otherwise noted.

2

For the sake of clarity, I will refer to the complaint filed by Charney in the related action as “Charney’s complaint” or his “discrimination complaint,” and the complaint filed in this action as “S&C’s complaint.”

(Compl. Ex. B at 6). In this document, he agreed “to continue to protect any confidential information that [he] gained while working for the firm” even after his termination and acknowledged reading, understanding and agreeing to abide by an attached five-page document entitled “Sullivan & Cromwell’s Statement of Policies on Confidentiality, Personal Securities Investments, Avoidance of Improper Influences, and Substantial Interest in Business Enterprises” (the “policy document”). The policy document applies only to “support staff,” but it states that “[s]imilar policies applicable to all legal personnel are set forth in the Office Manual” (*id.* Ex. B at p. 1 of 6). The Office Manual was not submitted with the papers in this motion.

In S&C’s complaint, S&C alleges that Charney’s complaint disclosed attorney-client privileged information, as well as confidences, secrets, and confidential information about S&C’s clients, in violation of his ethical duties and express agreement to keep such information confidential (S&C Compl. ¶¶ 3-6). S&C also alleges that Charney’s complaint “discloses sensitive, proprietary, and non-public information concerning S&C” (*id.* ¶ 7), including confidential S&C performance reviews (*id.* ¶ 15) and a copy of the firm’s Partnership Agreement, dated January 1, 1994, which S&C contends is a confidential document to which Charney had no legitimate purpose or reason to have access (*id.* ¶ 8).

S&C further complains that Charney disseminated the allegations in his complaint as broadly as possible, including posting notice of its filing on the “Greedy Associates” board on infirmation.com and posting the complaint on his own website (*id.* ¶ 9). After filing his lawsuit, Charney allegedly continued to disseminate client confidences, secrets and confidential information in various interviews and discussions with the media (*id.* ¶¶ 10-13).

S&C also contends that Charney e-mailed from his S&C e-mail account to his home e-mail

accounts a large number of confidential, sensitive and non-public documents as well as S&C work product (*id.* ¶ 15). Charney is alleged to have asked his secretary, in late November 2006, to make two copies of every document in his archived S&C e-mail folders. When the secretary suggested that, given the volume of documents in those folders, it would be more practical to copy the archives to a CD or DVD, but that doing so would require the approval of an S&C partner, Charney refused the suggestion (*id.* ¶ 16).

By letter dated January 19, 2007, Richard H. Klapper, a member of S&C's Managing Partners Committee, informed Charney that he was conducting a review of whether Charney's discrimination complaint or his related public statements referred to matters concerning S&C or its clients that might constitute client confidences or otherwise be confidential. In his letter, Klapper asked for a meeting at S&C's offices on January 23 to discuss these issues. Charney responded by letter dated January 22, saying that the content of the complaint and related public statements preserved any confidentiality obligations, but "[t]o the extent that there are other issues that you wish to discuss with me, feel free to respond with specific areas of discussion. Based on such information that you provide, if any, I will make an assessment as to whether our meeting is a worthwhile endeavor" (Klapper Aff. Ex. F).

On January 22, Klapper sent a second letter, asking for a meeting to discuss, among other things, the "return of client and firm emails, documents and other material that you have forwarded to your personal email address or otherwise taken from the Firm, including any audiotapes of voice message or conversations with lawyers or other at the Firm" (*id.*).³ Charney declined to meet.

³

I note that Klapper's January 22 letter to Charney asking for a meeting to discuss certain topics, does not mention the policy document concerning confidentiality. Rather, Klapper asks to

On January 24, the Wall Street Journal published an article, entitled, "Does 'Thank You' Help Keep Associates," discussing low associate moral at S&C and how the partners were responding. The article refers to a confidential slide presentation from the February 2006 partners' meeting. S&C alleges that Charney's office was located next door to the office of the partner who prepared this presentation, that this partner's copy of the presentation is missing from his file, and that the file appears to have been put out of order (S&C Compl. ¶ 17, Ex. E). The article also refers to a June 2006 memo from a S&C partner who was co-heading a new committee on associate morale, to her two co-heads, entitled, "Sample Goldman Sachs 360 Degree Reviews." Attached to the memo were four reviews of Goldman Sachs' employees, including three partner managing directors (the "Client Document").

After unsuccessful settlement discussions, on February 1, S&C terminated Charney's employment, and concurrently filed the complaint in this action and its motion for preliminary injunctive relief. S&C's complaint contains the following four causes of action: (1) breach of fiduciary duty through Charney's dissemination of sensitive and non-public information, causing substantial and irreparable harm to S&C's clients and S&C in violation of his fiduciary duties and the Code of Professional Responsibility DR 4-101 (b) (22 NYCRR 1200.19 (b)); (2) breach of the agreement Charney signed on September 18, 2003 concerning the confidentiality of information he received during his employment with S&C; (3) unlawful conversion of S&C confidential materials in his possession, including the S&C Partnership Agreement, client and S&C confidential documents, and audiotapes; and (4) replevin of the same materials.

meet to discuss, *inter alia*, Charney's "compliance with Firm policies outlined in the Office Manual and 'Working at S&C'" (Klapper Aff. Ex. F).

On February 1, the Honorable Charles E. Ramos signed a limited temporary restraining order against Charney, with his consent, enjoining “Charney and those in concert with him . . . from revealing or disclosing the confidences or secrets of any clients of S&C.” Judge Ramos asked both sides, “as a condition of this order to show cause, to refrain from any statements to the press or to the public about this case or the case that Mr. Charney has commenced.” (Feb. 1, 2007 Trans. at 3).

Judge Ramos further stated:

I would also ask Mr. Charney, since he has admitted to me that he is in possession of Sullivan & Cromwell documents, which he claims some or all of which he obtained in the ordinary course at Sullivan & Cromwell because he would e-mail things to himself either to work at home or work elsewhere that there be no dissemination of any Sullivan & Cromwell client documents or Sullivan & Cromwell internal documents until there has been a hearing, or, at least, a return date before Justice Fried, and that is discussed with him.

(*Id.* at 4.) Counsel for S&C objected that Charney should at least be required to immediately return to S&C or at least deliver to the court “very highly confidential documents that apparently were reviewed by the Wall Street Journal,” referring to the Client Document. Charney responded by saying that his preference would be to keep them until he got counsel, and that he was giving his word that he would not disclose anything to anyone.

Charney, through his newly-retained counsel, delivered to the court on February 7 documents in his possession that he claimed he obtained as an employee of S&C and that he believed might be relevant to this case, and returned to S&C directly other documents in his possession that were not relevant.

S&C’s order to show cause was returnable the following day, February 8. With respect to the documents voluntarily delivered to the court by Charney’s attorneys, I ruled that, because they came from S&C, they should go back to S&C. S&C was directed to take the originals, copy them,

maintain the originals, and return copies to the Court, which would hold them under seal (Feb. 8, 2007 Trans. at 17-18).⁴ I further ruled that, if there was a basis for Charney to look at or use the documents in the discrimination action, it would be dealt with at a later time (*id.* at 18). Charney's attorneys represented, at S&C's request, that neither Charney nor his lawyers retained any copies of the documents returned to S&C (*id.* at 37), but with respect to the documents deposited with the Court, that Charney maintained a copy of "a very small universe of documents, for example, his own performance reviews" and possibly one other document (*id.*, at 37-38). S&C urged that Charney provide an affidavit regarding these representations, and I ordered him to do so by February 14 (*id.* at 39-40). Charney's lawyers advised the court that some S&C documents might exist in Charney's Hotmail and RCN e-mail accounts (*id.* at 42-43), and S&C asked for their return. S&C was directed to retain a forensic expert to arrange to take them off the servers (*id.* at 44).

On February 13, Charney executed a two paragraph affidavit in which he stated, in full:

1. I have destroyed the hard drive on my computer.
2. I have no copies of any of the documents that were previously turned over to the Court or Sullivan & Cromwell LLP.

(James Affirm. Ex. L.)

On March 7, I signed an order appointing Baker Robbins & Company as a neutral expert to identify and preserve any and all electronic files and data belonging to S&C, or its clients, that exist on Charney's accounts, whether under his name, or accessible to or controlled by him, with Hotmail, RCN, Yahoo or any other provider utilized by Charney.

At oral argument of these motions on April 12, counsel for Charney consented to the entry

⁴ S&C has returned copies of these documents to the Court.

of a preliminary injunction against Charney restraining him from revealing or disclosing the confidences or secrets of any S&C clients, and, to the extent he had not already done so, requiring Charney to return to S&C all documents, files and other materials in any form in his possession, custody and control, with the exception of documents concerning Charney's employment reviews and audio-taped conversations, which are the subject of a separate stipulation between the parties (*see* Apr. 12, 2007 Trans. at 50-53).

When presented with a motion to dismiss pursuant to CPLR 3211 (a) (7), the complaint must be construed liberally, the facts alleged therein accepted as true, and the plaintiff accorded the benefit of every possible favorable inference (*511 West 232nd Owners Corp. v Jennifer Realty Co.*, 98 NY2d 144, 151-152 [2002]; *Richbell Info. Servs., Inc. v Jupiter Partners, L.P.*, 309 AD2d 288, 289 [1st Dept 2003]). While a complaint is to be liberally construed, the court is not required to accept factual allegations that are negated beyond substantial question by documentary evidence or allegations consisting of bare legal conclusions (*Maas v Cornell Univ.*, 94 NY2d 87, 91 [1999]; *Blackgold Realty Corp. v Milne*, 119 AD2d 512, 513 [1st Dept 1986], *affd* 69 NY2d 719 [1987]; *Jordan v UBS AG*, 11 AD3d 283, 285 [1st Dept 2004]; *Ullmann v Norma Kamali, Inc.*, 207 AD2d 691, 692 [1st Dept 1994]).

The first cause of action purports to assert a claim for breach of fiduciary duty through Charney's dissemination of sensitive and non-public information about S&C and its clients, causing substantial and irreparable harm to both in violation of his fiduciary duties as well as the Code of Professional Responsibility DR 4-101 (22 NYCRR 1200.19), for which S&C otherwise has no adequate remedy at law. S&C's complaint alleges that Charney breached a fiduciary duty in part by identifying "specific information about S&C's clients, their activities, and transactions" in his

discrimination complaint.

DR 4-101, entitled "Preservation of confidences and secrets of a client," prohibits the knowing disclosure of and certain uses of client confidences and secrets. A confidence is "information protected by the attorney-client privilege under applicable law," and a secret is "other information gained in the professional relationship that the client has requested be held inviolate or the disclosure of which would be embarrassing or would be likely to be detrimental to the client." (22 NYCRR 1200.19.)

The threshold question is whether S&C may bring a claim for damages for breach of fiduciary duty against Charney, formerly an at-will employee of the firm, based on an alleged violation of DR 4-101 or an alleged disclosure of confidential and/or proprietary documents and information concerning S&C.⁵

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The parties dispute whether Charney's alleged conduct violates DR 4-101 or any fiduciary duty to S&C as a matter of law. A more complete discussion of this question can be found in my decision issued today in the related action, *Charney v Sullivan & Cromwell LLP*, Index No. 100625-2007.

While the alleged disclosure of the Client Document to the Wall Street Journal would certainly implicate DR 4-101, Charney's complaint reveals very little about S&C or its clients that could be considered confidential, privileged, or a secret under DR 4-101. S&C's own website identifies all of these clients and most of the deals mentioned in Charney's complaint. The remaining deal and the names of the S&C partners who staffed them were publicly reported at the time, apparently with the acquiescence of S&C's clients.

There are a few possible exceptions. Paragraph 143 of Charney's complaint alleges that a named S&C client acceded to S&C's efforts to deny employment to a person who witnessed the alleged acts of discrimination, and paragraph 105 alleges that S&C removed a lawyer from a matter involving a client and replaced him with an attorney that S&C intended to fire. Paragraph 137 and Annex C describe a named client's deal as "lengthy and cumbersome," and Annex C characterizes a client's concerns about S&C's legal fees. While these sections of Charney's complaint do not reveal privileged material, I would not conclude as a matter of law that they do not implicate client secrets under DR 4-101. Resolution of these questions depends on issues of fact and cannot be resolved on a motion to dismiss.

Therefore, even if S&C were permitted to bring a cause of action for breach of fiduciary duty

Under New York law, an attorney's violation of a disciplinary rule does not, by itself, give rise to a cause of action by his client for breach of fiduciary duty (*Schwartz v Olshan Grundman Frome & Rosenzweig*, 302 AD2d 193, 199 [1st Dept 2003]), breach of contract (*The William Kaufman Org., Ltd. v Graham & James LLP*, 269 AD2d 171, 173 [1st Dept 2000]), or legal malpractice (*Swift v Choe*, 242 AD2d 188, 192 [1st Dept 1998]; *see also Guiles v Simser*, 35 AD3d 1054, 1055-56 [3d Dept 2006]). And if the client has no such private cause of action, then the propriety of extending such a right to S&C, which is purporting to act on behalf of its clients, is even less compelling (*cf. Madden v Creative Servs., Inc.*, 84 NY2d 738, 745-46 [1995] [declining to create a new tort based on an intruder's unauthorized inspection of a client's privileged documents in a lawyer's office, recognizing that such a claim "necessarily envelopes damage claims against attorneys themselves, which we have yet to recognize"]).

The law is equally clear that no fiduciary duties exist between an employer and an at-will employee (*Schenkman v N.Y. Coll. of Health Professionals*, 29 AD3d 671, 672 [2d Dept 2006]; *Vitale v Steinberg*, 307 AD2d 107, 109-10 [1st Dept 2003]; *Serow v Xerox Corp.*, 166 AD2d 917 [4th Dept 1990]; *Budet v Tiffany & Co.*, 155 AD2d 408, 409 [2d Dept 1989]; *Ingle v Glamore Motor Sales*, 140 AD2d 493, 494 [2d Dept 1988], *affd* 73 NY2d 183 [1989]). S&C is asking me to make an exception to this rule for an associate attorney who violates his ethical obligations to the firm's clients and acts disloyally to the firm by saying embarrassing things and leaking confidential firm documents to the press to bolster his own discrimination lawsuit. In doing so, S&C relies on an amalgamation of an attorney's ethical violations and an employee's duty of loyalty to his employer.

against Charney based on an alleged violation of DR 4-101, this cause of action would be dismissed with respect to most of Charney's alleged conduct.

The duty of loyalty, however, has been limited to cases where the employee, acting as the agent of the employer, unfairly competes with his employer, diverts business opportunities to himself or others to the financial detriment of the employer, or accepts improper kickbacks (*see, e.g., W. Elec. Co. v Brenner*, 41 NY2d 291 [1977] [kickbacks]; *Lamdin v Broadway Surface Adv. Corp.*, 272 NY 133, 138 [1936] [secret profits]; *Alexander & Alexander of N.Y., Inc. v Fritzen*, 147 AD2d 241, 247-248 [1st Dept 1989] [diversion of corporate opportunities from plaintiff to companies controlled by employees]; *Foley v D'Agostino*, 21 AD2d 60 [1st Dept 1964] [“[c]ompeting with one's employer represents a well-recognized instance of unlawful business injury” and violation of the duty of loyalty owing by the employees]).

For instance, S&C relies on *Louis Capital Markets v REFCO Group Ltd., LLC*, 9 Misc 3d 283 (Sup Ct, NY County 2005) for the proposition that an employee's use of information gained during his employment to the detriment of his employer has been held to constitute a breach of fiduciary duty. Despite its rather broad statement that “[a]n employee owes a fiduciary duty to his employer as a matter of law” (9 Misc 3d at 289), *Louis Capital* was actually not a fiduciary duty case, but a breach of loyalty case, involving an employee acting as a “mole,” who accepted employment with the plaintiff for the sole purpose of gathering information and resources for the corporate defendant to set up a competing business. Indeed, *Louis Capital* relied on *Lamdin*, in which the court did not use the word “fiduciary” in describing an employee's duty of loyalty to his employer (272 NY at 138). Similarly, in *Butler, Fitzgerald & Potter v Beggans*, 1994 WL 463966, 1994 U.S. Dist. LEXIS 11827 [SD NY, Aug. 23, 1994], on which S&C relies, the court sustained a motion to dismiss a claim against an attorney for breach of his duty of loyalty to his law firm based on the allegation that he proposed to a client that it pay him \$500,000 personally for his work on its

case. No analogous allegation of disloyalty has been made against Charney in S&C's complaint.

S&C argues that, barring a cause of action for breach of fiduciary duty, it is otherwise without recourse for Charney's alleged leak of the Client Document to the press and the other alleged violations of DR 4-101. But this argument is not entirely accurate; the firm still may seek punitive remedies against Charney, such as firing him (which it has already done), filing disciplinary charges for any ethical violations with the appropriate Appellate Division,⁶ suing for breach of any binding confidentiality agreements, and seeking injunctive relief to prevent any future inappropriate disclosures. New York law does not authorize S&C to seek a damages remedy.

For these reasons, I conclude that the first cause of action fails to state a cause of action for breach of fiduciary duty against Charney.

In the second cause of action, S&C sues for breach of contract, contending that Charney has breached the written agreement he signed on September 18, 2003 concerning the confidentiality of information received by him in the course of his employment with S&C, and the attached policy document, which refers to the Office Manual that pertains to S&C's legal personnel.

Charney contends that this claim must be dismissed based on documentary evidence, because the document he signed is merely a signed receipt and acknowledgment of the firm's Office Manual, and cannot be inflated into a contract by either the employee or the firm. (*See Lobosco v N.Y. Tel. Co.*, 96 NY2d 312, 317 [2001] [cautioning that "[r]outinely issued employee manuals, handbooks and policy statements should not lightly be converted into binding employment agreements"]; *Maas*,

6

Attorneys are bound to keep private the confidential communications and secrets of their clients "on pain of professional discipline, including the loss of their license to practice law" (*Madden*, 84 NY2d at 745).

94 NY2d at 94 [holding that written procedures in defendant university's campus code and regulations did not evolve into terms of an implied contract, where handbook stated that it could be altered at any time (impliedly unilaterally)].)

Charney argues that S&C's Office Manual "no doubt includes a disclaimer that it does not constitute an employment agreement" (Charney's Mem. Of Law In Support His Cross Motion to Dismiss and In Opp. to Plaintiff's Motion For a Preliminary Injunction, at p. 10) and thus does not create a binding contract. It is impossible for me to determine whether he is right, or whether the Office Manual prohibits his alleged conduct, because the Office Manual has not been submitted to me. Accordingly, the issue is more properly addressed at summary judgment, and the motion to dismiss the second cause of action is denied.

Charney moves to dismiss the third and fourth causes of action for conversion and replevin on the grounds that they do not state a cause of action and have been rendered moot by his voluntary return of S&C's documents. S&C's complaint alleges that Charney took S&C property, including S&C's Partnership Agreement and client-related documents. Charney does not deny taking the materials at issue, but he argues that the taking was lawful, because he was an employee of S&C at the time S&C filed this lawsuit and that he obtained the materials at issue during the course of his employment. Charney also argues that he has not unlawfully withheld S&C property because S&C did not demand the return of the property before it filed this lawsuit, and because he promptly returned all of the documents in his possession after his termination on February 1.

There is no basis to dismiss any of these claims at this point. Whether there was a wrongful taking of S&C's property is an issue of fact that cannot be resolved on a motion to dismiss. I do not accept the argument that Charney was entitled as an employee of the firm to access and remove

partnership materials and information. A taking of property without right constitutes conversion, and no demand and refusal is necessary to render the defendant liable (*Mullen v J.J. Quinlan & Co.*, 195 NY 109, 115 [1909]). Moreover, even if Charney initially had a right to possess some of the documents, a cause of action for replevin and conversion arises when the owner demands the return of its property and the demand is refused (*Solomon R. Guggenheim Found. v Lubell*, 77 NY2d 311, 317-18 [1991]). Klapper's January 22 letter to Charney, requesting a meeting to discuss the return of firm documents, and Charney's response, refusing to meet, is sufficient to satisfy this requirement.

In support of his contention that he has returned all the confidential documents at issue, Charney has submitted only an affidavit by his attorney without personal knowledge, which is not entitled to any weight (*Lewis v Safety Disposal Sys. of Penn., Inc.*, 12 AD3d 324, 325 [1st Dept 2004]; *Rubin v Rubin*, 72 AD2d 536, 537 [1st Dept 1979]). Thus, even if his return of the documents were otherwise sufficient to moot S&C's claims, Charney is not entitled to dismissal on the weight of his attorney's affidavit. Thus, the motion to dismiss the third and fourth causes of action for conversion and replevin is denied.

It is unnecessary to discuss S&C's motion for preliminary injunctive relief. The parties do not dispute that S&C is entitled to some form of preliminary injunction as to Charney, although they dispute whether or not it should also apply to those "acting in concert" with Charney. I am satisfied that it should, and a separate order to that effect has been filed today.

For the foregoing reasons, it is hereby

ORDERED that plaintiff Sullivan & Cromwell's motion for a preliminary injunction (Mot. Seq. No. 001) is granted in accordance with the separate order signed today;

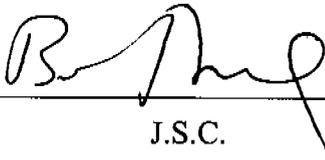
ORDERED that defendant Charney's cross motion to dismiss the complaint is granted to

the extent of dismissing the first cause of action, and denied in all other respects; and it is further

ORDERED that defendant Charney shall serve and file an answer to the remaining claims in the complaint within twenty (20) days of service of a copy of this order with notice of entry.

Dated: April 30, 2007

ENTER:



J.S.C.

BERNARD J. FRID
J.S.C.

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007

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK

NYS SUPREME COURT
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-----X
SULLIVAN & CROMWELL LLP,

Index No. 600333/2007

Plaintiff,

ORDER

vs.

AARON BRETT CHARNEY,

Defendant.

FILED

FBEM

APR 30 2007

NEW YORK
COUNTY CLERK'S OFFICE

Plaintiff Sullivan & Cromwell LLP ("S&C") having submitted this ORDER, and this Court having considered said ORDER, it is hereby ORDERED that

(1) defendant Charney and those in concert with him are hereby restrained and enjoined from revealing or disclosing the confidences or secrets of any clients of plaintiff S&C;

(2) defendant Charney and those in concert with him are hereby restrained and enjoined from revealing or disclosing materials in any form containing S&C attorney work product or proprietary non-public information of S&C (except as otherwise agreed by the parties or ordered by the Court);

(3) to the extent that he has not already done so,¹ defendant Charney shall return to S&C all documents, files and other materials in any form in his possession, custody or control, (a) referring or relating to any client of S&C, (b) constituting S&C attorney work product, (c) that he obtained by virtue of his employment at S&C, including documents concerning S&C, except for Mr. Charney's performance reviews; and (d) the tapes that Charney refers to in

¹ Defendant Charney has represented that he has returned documents to S&C. Following the completion of the Baker Robbins & Company review of electronic data in his email accounts, any electronic data covered by this Order shall be returned to S&C, and Charney shall no longer have access to such data.

paragraph 2 of his Complaint against S&C (attached as Exhibit A to the Klapper Affidavit) that contain S&C client confidences and secrets.

4/30/07
DATE


Justice Bernard Fried (JSC)
BERNARD J. FRIED
J.S.C.

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