

**Elegran LLC v Urban Compass, Inc.**

2020 NY Slip Op 33272(U)

October 2, 2020

Supreme Court, New York County

Docket Number: 654370/2019

Judge: Jennifer G. Schechter

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This opinion is uncorrected and not selected for official publication.

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

PRESENT: HON. JENNIFER G. SCHECTER PART IAS MOTION 54EFM

*Justice*

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ELEGRAN LLC,

Plaintiff,

- v -

URBAN COMPASS, INC., ZINO ANGELIDES,

Defendants.

-----X

INDEX NO. 654370/2019

MOTION SEQ. NO. 002 004

**DECISION + ORDER ON  
MOTION**

The following e-filed documents, listed by NYSCEF document number (Motion 002) 44-49, 57, 59-63, 65 were read on this motion for DISMISSAL.

The following e-filed documents, listed by NYSCEF document number (Motion 004) 69-77 were read on this motion for VACATE PRELIM INJUNCTION & FEES.

Motions sequence numbers 002 and 004 are consolidated for disposition. Defendant Zino Angelides moves, pursuant to CPLR 7502(c), to vacate the preliminary injunction entered against him (Seq. 004). Defendant Urban Compass, Inc. d/b/a Compass Real Estate (Compass) moves to dismiss the complaint pursuant to CPLR 3211(a)(1) and (7) (Seq. 002). Plaintiff opposes both motions.

The motion to vacate the preliminary injunction as against Angelides is granted pursuant to CPLR 7502(c). The preliminary injunction automatically expired and was rendered null and void as of no later than December 26, 2019, which was 30 days following this court's order dated November 26, 2019 (NYSCEF Dkt. 68 [order]) compelling plaintiff Elegran to arbitrate its claims against Angelides and continuing the September 5, 2019 preliminary injunction (Dkt. 41 [order]) as against him pursuant to CPLR 7502(c). Plaintiff failed to demonstrate good cause to extend the time in which to commence mandatory

arbitration (*see Men Women N.Y. Model Mgt., Inc. v Elite Model Mgt.-New York LLC*, 183 AD3d 501, 502 [1st Dept 2020]). CPLR 7502(c), moreover, mandates that the court award “costs, including reasonable attorney’s fees” to Angelides under these circumstances.

The motion to dismiss the claims asserted against Compass is denied as to the third and fourth causes of action for misappropriation of trade secrets and unfair competition, respectively. While many of the allegations are conclusory (*e.g.* Dkt. 2 [complaint] ¶¶ 14, 44, 83, 91), it is undisputed that after leaving Elegran, Angelides accessed and copied Elegran’s “client database” and “lead list” to his personal e-mail and uploaded both to Compass’s servers (*see Ashland Mgt. Inc. v Janien*, 82 NY2d 395, 407 [1993] [accepting definition of trade secret to include a “compilation of information which is used in one’s business, and which gives [one] an opportunity to obtain an advantage over competitors who do not know or use it”]). Affording plaintiff the benefit of every possible favorable inference, as required by CPLR 3211(a)(7) (*Leon v Martinez*, 84 NY2d 83, 87 [1994]), dismissal of the misappropriation of trade secrets and unfair competition causes of action is unwarranted at this early stage. However, discovery will be restricted to the issues of whether Compass made any improper use of the “client database” and “lead list” in the absence of allegations that any other alleged trade secrets were misappropriated.

The third cause of action for tortious interference with contract against Compass is dismissed. None of the provisions alleged to have been breached in the Independent Contractor Agreement (Dkt. 47)--the sole agreement signed by Angelides--caused damages to plaintiff (*see Foster v Churchill*, 87 NY2d 744, 749-50 [1996] [damages are required for tortious interference with contract claim]). And in the absence of allegations

that Angelides ever signed the Confidentiality, Non-Disclosure and Non-Solicitation Agreement (Dkt. 48) (*see* Dkt. 2 [complaint] ¶ 50), allegations that Compass knew Angelides was bound are not tenable. The seventh cause of action for aiding and abetting breach of fiduciary duty is dismissed because there are no facts supporting the conclusory allegation that Angelides owed fiduciary duties to plaintiff. Finally, the eighth cause of action for tortious interference with prospective contractual relations is dismissed as against Compass, because it is duplicative of the third and fourth causes of action for misappropriation of trade secrets and unfair competition. Additionally, plaintiff failed to plead facts supporting an inference that Elegran was the procuring cause of any transaction or would have been eligible to receive a commission but for wrongful conduct by Compass (Dkt. 59 [Rossi Aff.] ¶¶ 6-7; *see BGC Partners, Inc. v Avison Young (Can.) Inc.*, 160 AD3d 407 [1st Dept 2018]; *BGC Retail Advisors, Inc. v SLG 625 Lessee LLC*, 138 AD3d 425 [1st Dept 2016]).

The dismissed claims are conclusory and recite satisfaction of legal requirements without sufficient factual allegations demonstrating that they may have actually been met (*see BGC Partners, Inc.*, 160 AD3d at 407-08). Accordingly, it is

ORDERED that the motion of defendant Urban Compass, Inc. d/b/a Compass Real Estate to dismiss the complaint (Seq. No. 002) is granted to the extent of dismissing the third, seventh and eighth causes of action as against it, and is otherwise denied; and it is further

ORDERED that the motion of defendant Zino Angelides (Seq. No. 004) pursuant to CPLR 7502(c) is granted to the extent of vacating the preliminary injunction as against him dated September 5, 2019 and November 26, 2019 (Dkts. 41 and 68); and it is further

ORDERED that within 14 days, defendants' counsel may submit an affidavit setting forth Angelides's reasonable attorneys' fees and costs recoverable under CPLR 7502(c) and attaching documentary proof thereof, and with 14 days of defendants' submission, plaintiff may oppose the request, and the e-filing confirmation for any such submission shall be emailed to [mrand@nycourts.gov](mailto:mrand@nycourts.gov).

10/2/2020

DATE

CHECK ONE:

CASE DISPOSED

NON-FINAL DISPOSITION

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JENNIFER G. SCHECTER, J.S.C.