SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY

PRESENT: HON. NANCY M. BANNON, *Justice* — PART 61M

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SIFI NETWORKS AMERICA LLC, SIFI SARATOGA SPRINGS INC., SIFI EAST HARTFORD INC., SIFI NETWORKS AMERICA, LTD, SI-FI GLOBAL LIMITED,

Plaintiffs,

- v -

GENERATE CAPITAL, PBC, GENERATE SARATOGA SPRINGS FIBER MEMBER, LLC, GENERATE EAST HARTFORD FIBER MEMBER, LLC,

Defendants.

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INDEX NO. 651211/2024

MOTION DATE 09/03/2024

MOTION SEQ. NO. 003

DECISION + ORDER ON MOTION

The following e-filed documents, listed by NYSCEF document number (Motion 003) 45, 46, 47, 48, 49, 50, 51, 52, 53, 54, 55, 56, 57, 58, 59, 60, 61, 62, 63, 64, 65, 66, 67, 46-1, 47-1, 48-1, 50-1, 60-1, 68, 68-1, 69, 69-1, 70, 71, 71-1, 72

were read on this motion to/for DISMISS.

I. INTRODUCTION

In this breach of contract action, the plaintiffs, a set of telecommunication companies that develop and operate fiber optic networks, allege they shared confidential business information with the defendants subject to a nondisclosure agreement (the "NDA"), and that the defendants, after investing in one of the plaintiffs' competitors, nonparty Ubiquity Management, LLC ("Ubiquity"), breached the NDA by disclosing that confidential information to Ubiquity, which Ubiquity then used to more effectively compete with the plaintiffs. The defendants now move, pre-answer, to dismiss the amended complaint pursuant to CPLR 3211(a)(1) and (a)(7). The plaintiffs oppose the motion. The motion is granted in part.

II. BACKGROUND

The facts herein are taken from the plaintiffs' amended complaint and the exhibits thereto. Pursuant to the NDA, which was executed in October 2020, the parties agreed to exchange confidential information in aid of ongoing discussions of a business opportunity concerning the deployment of fiber infrastructure. The NDA provides, in pertinent part, that the defendants agree "not to use any Confidential Information disclosed to [them] or made available by Discloser for any purpose other than to carry out discussions concerning, and the undertaking of" the subject business opportunity. "Confidential Information" was defined to include the plaintiffs' "trade secrets, know-how, proprietary information, data, pricing, research, product plans, products, developments, inventions, processes, designs, drawings, engineering, formulae, markets, . . . business plans, agreements with third parties, services, customers, marketing or finances of [the plaintiffs] or [their] suppliers and licensors." The NDA had a five-year term extending to October 2025.

Subject to the protections of the NDA, the plaintiffs shared with the defendants a proprietary financial model (the "Model"), which included a list of "target cities" for the plaintiffs' business model. The target cities in which the plaintiffs were already publicly involved were named, while the remaining target cities were identified by their state, county, or region, and certain demographic information, with the city name removed. Subsequently, after the parties consummated their planned transaction in August 2021, the defendants "received a hands-on education in how to operationalize [the plaintiffs'] trade secrets, proprietary know-how, and business methods."

In January 2022, the defendants announced a $400 million investment in Ubiquity. The plaintiffs allege that, following this investment, Ubiquity began using more sophisticated business approaches "that reflected the [plaintiffs'] business methods and techniques," and that "the only reason Ubiquity now can and does employ this [more sophisticated] approach is from [the defendants'] sharing of [the plaintiffs'] Confidential Information and trade secrets." The plaintiffs further allege that Ubiquity began to compete in a wider array of markets, including several of the unnamed target cities identified in the Model, the identity of which the defendants allegedly reverse-engineered from the geographic and demographic information disclosed to them, and that "the only way Ubiquity knew about the viability of a project" in these target cities "was through [the plaintiffs'] Confidential Information and trade secrets."

The plaintiffs commenced this action in March 2024. They filed the operative, amended complaint in May 2024, alleging causes of action for (1) breach of the NDA, (2) unjust enrichment, and (3) misappropriation of trade secrets. The instant motion ensued.

III. DISCUSSION

When assessing the adequacy of a pleading in the context of a motion to dismiss under CPLR 3211(a)(7), the court's role is "to determine whether [the] pleadings state a cause of action." 511 W. 232nd Owners Corp. v Jennifer Realty Co., 98 NY2d 144, 151-52 (2002). To determine whether a pleading adequately states a cause of action, the court must "liberally construe" it, accept the facts alleged in it as true, accord it "the benefit of every possible favorable inference" (id. at 152; see Romanello v Intesa Sanpaolo, S.p.A., 22 NY3d 881 [2013]; Simkin v Blank, 19 NY3d 46 [2012]), and determine only whether the facts as alleged fit within any cognizable legal theory (see Hurrell-Harring v State of New York, 15 NY3d 8 [2010]; Leon v Martinez, 84 NY2d 83 [1994]).

The defendants' motion is denied to the extent it seeks dismissal of the plaintiffs' breach of contract claim as the complaint sufficiently alleges all elements of that claim: (i) the existence of a contract, (ii) the plaintiff's performance under the contract, (iii) the defendant's breach of that contract, and (iv) resulting damages. See Harris v Seward Park Housing Corp., 79 AD3d 425 (1st Dept. 2010). The amended complaint alleges the existence of the NDA, the plaintiffs' performance thereunder, and the defendants' breach by disclosing the plaintiffs' confidential information to Ubiquity and that it suffered damages as a result.

The defendants' contention that the plaintiffs' allegations are too vague and conclusory to support the breach of contract cause of action is unavailing. The plaintiffs allege that the defendants must have disclosed confidential information to Ubiquity because, following the defendants' investment, Ubiquity began using "more sophisticated business approaches that reflected the [plaintiffs'] business methods and techniques." Regarding Ubiquity's increased "sophistication," the complaint specifically alleges that Ubiquity began contracting directly with municipalities in which it worked and began to employ an open-access fiber model by implementing independent network operating centers, both of which were business methods previously employed by the plaintiffs. The plaintiffs further allege that, following the defendants' investment, Ubiquity began to compete with the plaintiffs in several of the unnamed target cities identified in the Model shared with the defendants, and that "the only way Ubiquity knew about the viability of a project" in these target cities was based on the defendants' use of the Model to reverse-engineer the identities of the unnamed target cities.

To be sure, the defendants point to allegations in the complaint, and submit certain evidence, that is at odds with the plaintiffs' core contentions, as they tend to suggest that the subject business methods may not be unique to the plaintiffs, and/or that Ubiquity was using certain of these methods prior to receiving the defendants' investment, and/or that many of the target cities named in the amended complaint could be identified as viable markets by competitors without any access to the plaintiffs' purportedly confidential information.

Nevertheless, in determining whether the complaint alleges facts sufficient to state a cause of action, the court is '"not authorized to assess the merits of the complaint or any of its factual allegations.'" Bangladesh Bank v Rizal Com. Banking Corp., 226 AD3d 60, 85–86 (1st Dept. 2024), quoting Skillgames, LLC v Brody, 1 AD3d 247, 250 (1st Dept. 2003). Therefore, the defendants' motion is denied to the extent it seeks dismissal of the plaintiffs' breach of contract cause of action.

The defendants' motion is granted, however, to the extent it seeks dismissal of the plaintiffs' causes of action for unjust enrichment and misappropriation of trade secrets. These causes of action are both based on the same alleged disclosure and use of confidential information that forms the basis of the breach of contract claim. Specifically, the unjust enrichment cause of action is based on allegations that the defendants have been enriched "because it took [the plaintiffs'] Confidential Information and used it to perform [the plaintiffs'] business through Ubiquity." The misappropriation of trade secrets claim is likewise based on allegations that the plaintiffs shared trade secrets, including the Model and their business methods, with the defendants in connection with their business transaction and subject to the protections of the parties' agreement, the NDA, which notably included "trade secrets" within its definition of "Confidential Information," and that the defendants "ha[ve] used and [are] continuing to use [these] trade secrets for [their] own pecuniary gain by building competitive open-access fiber optic networks through . . . Ubiquity."

As a general rule, where, as here, a plaintiff seeks to recover under an express agreement, no cause of action lies to recover for unjust enrichment. See Clark-Fitzpatrick, Inc. v Long Is. R.R. Co., 70 NY2d 382 (1987); JDF Realty, Inc. v Sartiano, 93 AD3d 410 (1st Dept. 2012). Likewise, a cause of action for misappropriation of trade secrets is duplicative of a breach of contract claim, and is subject to dismissal on that basis, where, as here, it is based entirely on alleged conduct that is proscribed by the subject contract. See Indeck Energy Servs., Inc. v Merced Cap., L.P., 200 AD3d 455, 457 (1st Dept. 2021); Linkable Networks, Inc. v Mastercard Inc., 184 AD3d 418, 418 (1st Dept. 2020). To be sure, "[w]here the same conduct constitutes a breach of a contractual obligation and the breach of a duty independent and distinct from the contract, a party may be subject to both breach of contract and tort claims." AT Last Sportswear, Inc. v Byron, 226 AD3d 551 (1st Dept. 2024). Such is not the case here, as the plaintiffs allege no duty constraining the defendants' disclosure and use of the plaintiffs' confidential information and trade secrets independent and distinct from the NDA.

Therefore, the unjust enrichment and misappropriation of trade secrets claims are dismissed pursuant to CPLR 3211(a)(7). Dismissal pursuant to CPLR 3211(a)(1) is warranted to the extent it is premised on the existence of the NDA. This agreement alone does not “resolves all factual issues as a matter of law, and conclusively dispose[s] of the plaintiff’s claim[s]” (Fortis Financial Services, LLC v Fimat Futures USA, 290 AD2d 383, 383 [1st Dept. 2002]) but, as discussed, its existence does render duplicative the claims of unjust enrichment and misappropriation of trade secrets.

IV. CONCLUSION

Accordingly, upon the foregoing papers, it is

ORDERED that the defendants’ motion to dismiss the amended complaint is granted to the extent it seeks dismissal of the second and third causes of action for unjust enrichment and misappropriation of trade secrets, and the motion is otherwise denied; and it is further

ORDERED that the defendants shall file an answer to the remaining cause of action in the amended complaint within thirty (30) days of the date of this order; and it is further

ORDERED that the parties shall appear for a status conference on September 4, 2025, at 11:30 a.m., as previously scheduled, to be held via Teams; and it is further

ORDERED that the Clerk shall mark the file accordingly.

This constitutes the Decision and Order of the court.

NANCY M. BANNON, J.S.C.
HON. NANCY M. BANNON

5/16/2025
DATE

CHECK ONE:	[ ]	**CASE DISPOSED**		X	**NON-FINAL DISPOSITION**		
	[ ]	**GRANTED**	[ ] **DENIED**	X	**GRANTED IN PART**	[ ]	**OTHER**
APPLICATION:	[ ]	**SETTLE ORDER**		[ ]	**SUBMIT ORDER**		
CHECK IF APPROPRIATE:	[ ]	**INCLUDES TRANSFER/REASSIGN**		[ ]	**FIDUCIARY APPOINTMENT**	[ ]	**REFERENCE**