

Stamack, Inc. v Romero

2007 NY Slip Op 32570(U)

August 8, 2007

Supreme Court, New York County

Docket Number: 0118875/2006

Judge: Richard B. Lowe

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SUPREME COURT OF THE STATE OF NEW YORK NEW YORK COUNTY

PRESENT: _____

PART 56

HON. ROBERT D. LOWE, III Justice

Starnack

INDEX NO. 118875/06

- v -

MOTION DATE 5/8/07

Romero

MOTION SEQ. NO. 003

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 ...

PAPERS NUMBERED

Answering Affidavits — Exhibits _____

Replying Affidavits _____

Cross-Motion: Yes No

Upon the foregoing papers, it is ordered that this motion

RESOLVED IN ACCORDANCE WITH THE ACCOMPANYING MEMORANDUM DECISION

FILED
AUG 20 2007
NEW YORK
COUNTY CLERK'S OFFICE

HON. ROBERT D. LOWE, III

Dated: 8/8/07

J.S.C.

Check one: FINAL DISPOSITION NON-FINAL DISPOSITION

Check if appropriate: DO NOT POST REFERENCE

MOTION/CASE IS RESPECTFULLY REFERRED TO JUSTICE FOR THE FOLLOWING REASON(S):

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK : IAS PART 56

-----x

STAMACK, INC., and STAMACK
CONSTRUCTION, LLC,

Index No: 118875/06

Plaintiffs

-against-

DECISION AND ORDER

EDWARD ROMERO, and
CITADEL CONSTRUCTION CORP.,

Defendants

FILED
AUG 20 2007
NEW YORK
COUNTY CLERK'S OFFICE

-----x

RICHARD B. LOWE, III, J:

Plaintiffs Stamack, Inc., and its subsidiary Stamack Construction, LLC (collectively referred to as "Stamack") bring the instant action against Defendants Edward Romero ("Romero") and Citadel Construction Corp. ("Citadel") for breach of fiduciary duty, defamation, breach of duty of loyalty, unfair competition, conversion, injunctive relief enjoining Defendants from unfairly competing with Stamack, and injunctive relief compelling return and enjoining use of proprietary information.

In Motion Sequence 003, Defendants Romero and Citadel move to dismiss pursuant to CPLR 3211(a)(7), 3013, and 3016(a) and (b).

BACKGROUND

Stamack are New York based companies that engage in the construction business. David

McWilliams and Friendly Ghost Enterprises, LLC (Stamack's two 50% shareholders) each equally own and control Stamack. Friendly Ghost Enterprises, LLC ("FGE") is a New York limited liability company that is owned and controlled by Laura and Daniel Gordon. FGE had the right to place a representative on Stamack's Board of Directors and on October 20, 2006, Romero was designated FGE's representative. Romero also acted as a consultant/project manager for Stamack where he had access to Stamack's customer data, subcontractor information, pricing information, bidding data, and information relating to ongoing projects and business development initiatives (the "Proprietary Information").

On or about the same day that Romero was named a representative on the Board of Directors, McWilliams began negotiations to buy out FGE for their interest in Stamack. It was proposed that FGE would purchase a subsidiary, Stamack USA, Inc. ("USA"), and FGE would be allowed to ask certain Stamack employees to transfer to USA. However, the results of these discussions were never carried out. Beginning on or about October 23, 2006, Stamack contends that Romero successfully recruited Stamack employees to join the new enterprise, Citadel, despite the unconsummated negotiations with Stamack. Defendants, in the converse, aver that on October 22, 2006, Romero was "fired" by McWilliams, who ordered him off the premises. In the two days that Romero was a Director, there was no Board meeting or any subsequent Board meetings after he was terminated that he knew of or was present for. On or about October 22, 2006, Defendants contend that a number of Stamack employees were also terminated and consequently Citadel hired a number of former Stamack employees who either were fired, or who were asked by Stamack to continue on until a pending project was completed, after which they joined Citadel.

On or about October 24, 2006, McWilliams withdrew the proposal to sell USA to FGE.

Shortly after, on October 25, 2006, Plaintiffs allege that Romero contacted Stamack's Director of Information Technology, Doug Dwyer ("Dwyer), in the middle of the night to gain access to the Stamack offices. Furthermore, Stamack avers that Romero took two boxes of business records from the offices, and also asked Dwyer to "trash" or erase specific computer files from Stamack's computer system. Dwyer claims that Romero admitted to him that Romero planned to "go on the offensive" to harm Stamack, as well as admitting that he had convinced some of Stamack's clients to leave with him.

On or about October 26, 2006, Romero filed a Certificate of Incorporation with the Secretary of State of Delaware to create Citadel, which Plaintiffs assert was formed to directly compete with Stamack. Subsequently, Stamack claims that Defendants appropriated construction work from some of Stamack's major clients, and also created the impression among subcontractors and suppliers that Citadel was affiliated with Stamack. Stamack's legal counsel sent a letter to Romero insisting that he refrain from all activities that are contrary to his fiduciary duties to Stamack. However, Plaintiffs aver that Defendants still remain in possession of the Proprietary Information, and have used this information to unfairly compete with Stamack.

Stamack further assert that Romero began to launch his "offensive" when he called Jonathan Moss ("Gucci's Legal Counsel"), chief legal counsel of Stamack client Gucci America, Inc. ("Gucci"). Romero allegedly told Gucci's Legal Counsel that: (1) he had left Stamack and taken a number of key Stamack people with him; (2) Stamack allegedly "forged" Romero's name to a document that was critical to a project being performed by Stamack for Gucci in Palm Beach Gardens, Florida (the "Gucci Project"); and (3) Romero intended to report the forgery to the local authorities, including the Palm Beach Gardens Building Department (the "Building

Department”).

On December 13, 2006, Romero supposedly told Gucci’s Legal Counsel that: (1) Romero had reported the claimed forgery to the Building Department and had advised the Building Department that the certificate of occupancy for the Gucci Project had been issued under false pretenses; (2) FGE was ending its relationship with Stamack and starting a new business because Stamack had not honored its contractual obligations with FGE; and (3) Romero was going to cause Stamack to be placed into receivership.

In the instant action, Stamack asserts that Romero was a Stamack consultant/project manager and a Stamack board member when the Gucci Project document was given to the Building Department. Furthermore, Stamack avers that they did not forge Romero’s name on that document and that Romero’s name was signed with his knowledge. In the instant motion, Defendants contend that Stamack fails to sufficiently plead a cause of action against them, warranting the action’s dismissal pursuant to CPLR 3211(a)(7), 3013, and 3016(a) and (b).

DISCUSSION

I. Dismissal Pursuant to CPLR 3211(a)(7)

“A party may move for judgment dismissing one or more causes of action asserted against him on the grounds that the pleading fails to state a cause of action.” (*CPLR 3211(a)(7)*). In considering the standards for a CPLR 3211(a)(7) motion for dismissal, the motion “assumes the truth of the complaint’s material allegations and whatever can be reasonably inferred therefrom. The motion should be denied if ‘from the pleading’s four corners factual allegations are discerned which taken together manifest any cause of action cognizable at law.’” (*McGill v Parker*, 179 A.D.2d 98, 105 [1st Dep’t 1992].)

a. Breach of Fiduciary Duty

A director is “prohibited from acting in any manner inconsistent with his agency or trust and [is] at all times bound to exercise the utmost good faith and loyalty in the performance of his duties.” (*Duane Jones Co. v Burke*, 306 N.Y. 172, 188 [1954].) In reviewing Defendants’ motion to dismiss pursuant to CPLR 3211(a)(7), Stamack does not have to prove its claims in the pleadings; rather the court will look only to see if Stamack states a cognizable cause of action.

Here, Stamack contends that an identifiable fiduciary relationship existed between the plaintiffs and Romero because he had been a director of Stamack (*see Complaint* ¶ 72). As a director, Romero owed duties of good faith, loyalty, and to act in the best interests of Stamack. (*See, e.g., Ajettix Inc. v Raub*, 804 N.Y.S.2d 580, 587 [2005].) Stamack avers that Romero took steps to “go on the offensive” to hurt Stamack and to further the interests of Citadel. In doing so, Stamack claims that Citadel was formed to be its direct business competitor. Consequently, Romero allegedly misappropriated and then used Stamack’s confidential and non-public information to solicit Stamack’s clients and projects to advance Citadel’s business. Stamack argues that Romero also has actively and successfully recruited some of Stamack’s employees, and has and continues to maliciously attack Stamack’s reputation to its clients and business associates, all of which were intended to harm Stamack. In employing the liberal pleading standards for a motion to dismiss, Stamack contends that there is a viable cause of action against Romero for breach of fiduciary duty, and thus Defendants’ motion should be denied.

Romero, in the converse, objects to Stamack’s assertion that Romero was a member of its Board of Directors. Romero had been a consultant to Stamack prior to serving as FGE’s representative on Stamack’s Board of Directors. However, two days after Romero’s nomination, on October 22, he was “fired” by McWilliams, who had ordered him off his property. Romero

claims that during the two days that he “served” as a Director, there was no Board meeting or any Board meetings after his termination where Romero was present or of which he was informed. Romero also was not provided access to any materials that would normally be provided to Board members, such as minutes of meetings or resolutions. McWilliams also fired Romero from his job as a consultant, which severed any personal connection that Romero had with Stamack. Furthermore, given that Citadel was formed on October 26, 2006, which was after Stamack fired Romero on October 22, 2006, Romero could not have breached any duty to Stamack. The court agrees with this position and finds that Romero owed no fiduciary duty to Stamack as he never actually served as a Director and that he lawfully formed Citadel after he was terminated from Stamack.

Additionally, even if Romero did have a fiduciary duty to Stamack, most of his activities that are alleged breaches of that duty do not constitute a breach as a matter of law, and the remaining alleged activities are not pled with particularity. CPLR 3016(b) applies to claims of breach of fiduciary duty, and it requires that “where a cause of action or defense is based upon misrepresentation, fraud, mistake, willful default, breach of trust or undue influence, the circumstances constituting the wrong shall be stated in detail.”

First, Stamack avers that Romero created Citadel to be Stamack’s direct competitor while he was still a Director (*see Complaint* ¶ 72). However, Romero was not made to sign a non-compete agreement. It is well-established that the formation of a competing company, even while still at the former company, does not establish a breach of fiduciary duty. (*See Bartfield v RMTS Assocs.*, 11 A.D.3d 386, 387 [1st Dep’t 2004] (the “steps that were taken to form the competing company, did not constitute breaches of their fiduciary duties”).) Next, Stamack argues that Romero “usurped or attempted to usurp business opportunities” from Stamack to

Citadel (*see Complaint* ¶ 73). However, the Complaint fails to identify any client or job that was actually lost by Stamack and it does not allege that any specific, identifiable business opportunity was in fact lost to Citadel. The Complaint only alleges that some of Stamack's employees were told by third parties that they had been advised by some unnamed people affiliated with Citadel that supposedly certain clients were leaving Stamack and going with Citadel (*see Complaint* ¶ 28-46). Stamack fails to show that such double and triple hearsay comments actually resulted in a loss of any clients, projects, or future opportunities to Citadel. Furthermore, a claim attempting to usurp a business opportunity will not be upheld.

Next, Stamack contends that Romero attempted to recruit and actually did recruit Stamack's employees to work for Citadel (*see Complaint* ¶ 74, 82). However, Stamack fails to state which specific employees were actually recruited by Romero. Even if Romero had induced Stamack's employees to join Citadel, the inducement of an at-will employee to join a competing business does not constitute a viable cause of action. (*See Headquarters Buick-Nissan, Inc. v Michael Oldsmobile*, 149 A.D.2d 302, 303 [1st Dep't 1989] (rejecting the contention that solicitation of plaintiff's at-will employees constituted a breach of fiduciary duty absent dishonest means or a scheme designed solely to damage the plaintiff).) Here, Stamack has not alleged actions by Romero to sustain its claim.

Stamack's next allegation to support their claim against Romero for breach of fiduciary duty is based on claims that Romero defamed Stamack to its clients and business contacts (*see Complaint* ¶ 75). According to CPLR 3016(a), claims of defamation must be pled with particularity, which requires that the precise defamatory words be set forth. Furthermore, claims of defamation that consist wholly on information and belief and on hearsay evidence cannot stand. (*See Zelnik v Bidermann Industries U.S.A., Inc.*, 242 A.D.2d 227, 228 [1st Dep't 1997].)

The facts stated in support of the allegation that Romero defamed Stamack are all pled entirely “upon information and belief” (*see Complaint* ¶¶60-67) and comprise of hearsay reports of phone conversations between Romero and Gucci’s Legal Counsel. The defamatory statement supposedly made by Romero (the claim that Romero accused Stamack of forging his name on a critical document) has no standing because Stamack’s allegations are again stated “upon information and belief.” (*See Complaint* ¶ 64). In addition, Stamack contends that Romero misled people in the industry into believing that Citadel was affiliated with Stamack. Stamack again bases this contention on a hearsay report that an unnamed Citadel employee allegedly told a subcontractor that Citadel was affiliated with Stamack. (*See Complaint* ¶ 39).

Finally, Stamack avers that Romero used Stamack’s personnel and resources to build the competing Citadel business while he was and still is a director of Stamack (*see Complaint* ¶ 80). However, Stamack fails to support this claim with any factual allegations in the Complaint. It has not identified Stamack personnel or the resources that were supposedly used by Romero to build Citadel. Accordingly, Stamack does not establish the elements needed to sufficiently plead that Romero breached a fiduciary duty. Thus, the Court concludes that Stamack has no cause of action for breach of fiduciary duty.

b. Defamation

In order to establish a viable cause of action for defamation, “it must be shown that the *facts* are false and that their publication was generated by actual malice, i.e. with a purpose to inflict injury upon the party defamed, or in a grossly irresponsible manner.” (*Kuan Sing Enterprises, Inc. v T. W. Wang, Inc.*, 86 A.D.2d 549, 550 [1st Dep’t 1982] (*citing Chapadeau v Utica, Observer-Dispatch, Inc.*, 38 N.Y.2d 196).) Claims of defamatory statements must be pled with particularity in which the precise defamatory words are set forth. (*CPLR 3016(a)*.)

Here, Stamack argues that Romero's statements regarding the false claim that Stamack had forged his signature and statements that maligned Stamack's business integrity constitute slander *per se*. In New York, slander *per se* relates to oral defamatory communications that accuse plaintiffs of: (1) serious sexual misconduct; (2) a loathsome disease; (3) dishonesty or incompetence in plaintiff's business; or (4) a serious crime. (*See, e.g., Liberman v Gelstein*, 80 N.Y.2d 429, 435 [1992].) The Plaintiffs allege that Romero falsely publicized to Gucci's Legal Counsel that Stamack had committed a crime by forging Romero's name on a critical document submitted to a local government agency. (*See Complaint* ¶¶ 61-64, 67.) Forgery of a document that is filed with a public office is a felony in New York. (*See Penal Law, art. 170, §170.10.*) Stamack contends that Romero knew that his signature was placed on this document when he was a consultant/project manager and Board member. Stamack also asserts that Romero vilified Stamack's business actions to their client, Gucci. Romero allegedly stated to Gucci's Legal Counsel that FGE was starting a new business because Stamack had not upheld their contractual obligations, and that Romero was going to cause Stamack to be placed into receivership. (*See Complaint* ¶¶ 65-66.) Thus, Stamack concludes that the Defendants should be liable for defamation *per se*.

The Complaint, however, fails to set forth the specific defamatory words used by Romero. All of the facts offered in support of Stamack's allegation are pled solely "upon information and belief," and consist only of double and/or triple hearsay reports of a phone call between Romero and Gucci's Legal Counsel. Allegations of defamation may not rest entirely on hearsay evidence, (*see Zelnik v Bidermann Industries U.S.A., Inc.*, 242 A.D.2d 227, 228 [1st Dep't 1997].) Since Stamack did not identify the precise defamatory words allegedly made by Romero, the Complaint is insufficient to sustain its claim. Accordingly, the Court concludes that

Plaintiffs have failed to state a cause of action against Defendants for defamation.

c. Breach of the Duty of Loyalty

“[An employee] is prohibited from acting in any manner inconsistent with his agency or trust and is at all times bound to exercise the utmost good faith and loyalty in the performance of his duties.” (*Maritime Fish Prods., Inc. v World-Wide Fish Prods., Inc.*, 100 A.D.2d 81, 88 [1st Dep’t 1984].) Plaintiffs aver that there was a fiduciary relationship between themselves and Romero because he was a consultant and project manager for Stamack and as such, he acted as a Stamack representative to meet the needs of their clients. Thus, Stamack asserts that Romero had a duty to act in good faith and in their best interests, but that Romero allegedly took actions that were contrary to this duty. He acted to benefit his own company, Citadel, by wrongfully misappropriating Proprietary Information belonging to Stamack. Plaintiffs contend that Romero used this Information to usurp business opportunities away from Stamack to benefit Citadel. By acting against Stamack’s business interests and intending to harm it, Stamack argues that Romero violated the trust it had in him as a consultant and director.

However, because Citadel was formed after McWilliams fired Romero, there was no duty of loyalty that Romero could breach at that time, and he also could not have usurped Stamack’s business prospects, as he no longer had any connection with Stamack. Stamack also fails to sufficiently plead its allegations that Romero breached a duty of loyalty. It did not identify any client or job that was actually lost to Stamack, nor does it identify any specific business opportunities that it lost in connection with Romero. Furthermore, Stamack fails to identify the Proprietary Information that Romero supposedly misused. In further support, an ex-employee is not prohibited from competing with his former employer absent a non compete clause. (*See, e.g., Frederic M. Reed & Co. v Irvine Realty Group, Inc.*, 281 A.D.2d 352 [1st Dep’t 2001].)

Therefore, the Complaint insufficiently pleads a cause of action for breach of duty of loyalty.

d. Unfair Competition

Although New York courts have not explicitly defined what qualifies as unfair competition, they have held that “the primary concern in unfair competition is the protection of a business from another’s misappropriation of the business ‘organization [or its] expenditure of labor, skill, and money.’” (*Ruder & Finn Inc. v Seaboard Sur. Co.*, 52 N.Y.2d 663, 671 [1981].) Here, Plaintiffs allege that Romero misappropriated Proprietary Information that belonged to Stamack when he took two boxes of business records from their office. (*See Dwyer Affidavit*, ¶¶ 3-4 and 7.) The Proprietary Information consisted of client information and contacts that Stamack spent a significant amount of time and effort to compile, and in which Stamack relies on tremendously in verifying its clients’ internal structures and client contacts. (*See Complaint* ¶¶ 55-57.) Stamack contends that Defendants have profited from this wrongful misappropriation by soliciting work from Stamack’s major clients. Plaintiffs also allege that Defendants have used and continue to use this information to benefit Citadel and also falsely represented to clients that Citadel was affiliated with Stamack. Thus, Stamack argues that if the Complaint and McWilliams and Dwyer Affidavits are to be given the benefit of every favorable inference, Defendants’ motion to dismiss should be denied.

For the most part, Stamack’s allegations are duplicative of the allegations that have already been set forth. Plaintiffs allege that Defendants used Stamack’s personnel and resources to advance Citadel’s business, that they gave off the impression that Citadel was affiliated with Stamack, and that they defamed Stamack. However, these allegations are insufficient, specifically because Romero no longer worked for Plaintiffs at the time Citadel was formed and thus did not have access to its personnel and resources. Additionally, Plaintiffs failed to identify

the personnel or resources that Defendants are said to have misappropriated. The allegations regarding Citadel being affiliated with Stamack are based on hearsay reports made by unnamed people. The defamatory claims are based solely on “upon information and belief” double and/or triple hearsay, and fail to set forth the specific words used.

Plaintiffs have alleged that Defendants used confidential client information and contacts to advance Citadel. However, Stamack has failed to plead with particularity what exactly the Proprietary Information consisted of and how it was used by Romero. Although Romero had access to this Information, it does not conclusively establish that he used it. In addition, Plaintiffs have not alleged that a physical appropriation or copying of confidential information occurred. It has only implied that the misuse on Romero’s part was due to Romero having retained certain information in his mind, which does not constitute a viable cause of action. (*See Catalogue Service of Westchester, Inc. v Henry*, 107 A.D.2d 783, 784 [2nd Dep’t 1985] (“Knowledge of the intricacies of a business operation does not necessarily constitute a trade secret and absent any wrongdoing it cannot be said that a former employee ‘should be prohibited from utilizing his knowledge and talents in this area.’”) Moreover, Romero’s communicating with Stamack’s clients, who are public knowledge, does not constitute an illicit act. (*See Newton Garment Carriers, Inc. v Consolidated Carriers Corp.*, 250 A.D.2d 482 [1st Dep’t 1998].) Accordingly, the Court finds that there is no viable cause of action for unfair competition.

e. Conversion

New York courts have held that conversion is “any unauthorized exercise of dominion or control over property by one who is not the owner of the property which interferes with and is in defiance of superior possessory right of another in the property.” (*Galtieri v Kramer*, 648 N.Y.S.2d 144, 145 [2nd Dep’t 1996].) Plaintiffs allege that Romero took various Stamack

business files, including business contacts and e-mails. (*See Dwyer Affidavit*, ¶¶ 3-4, and 7.)

The Complaint also alleges that Defendants have its Proprietary Information, such as customer data, information relating to Plaintiffs' current projects, and other information that are confidential and proprietary to Stamack. (*See Complaint* ¶¶ 55-57, 110-111, and 126-127.)

Stamack contends that Defendants have converted and are using the Proprietary Information to advance Citadel's business interests. However, as set forth above, Plaintiffs have failed to plead with particularity what exactly the Proprietary Information consisted of, and further, Stamack does not allege that Defendants have physically misappropriated or copied this Information. The identification of this Proprietary Information is especially important because the use of information that is retained in memory does not amount to a viable cause of action. Thus, the Court finds that Plaintiffs fail to state an actionable claim for conversion.

f. Injunctive Relief to Enjoin Defendants from Unfairly Competing with Stamack

This court has held that "[i]njunctive relief will be afforded only in those extraordinary situations where the plaintiff has no adequate remedy at law and such relief is necessary to avert irreparable injury." (*Chicago Research and Trading v New York Futures Exchange, Inc.*, 446 N.Y.S.2d 280, 282 [1st Dep't 1982].) Here, Plaintiffs claim that Defendants intentionally used dishonest means to solicit Stamack's customers to further Citadel's business. It seeks to enjoin Defendants from their wrongful conduct because no other adequate remedy at law exists, and such relief is necessary to prevent further injury from Defendants' tortious behavior. As discussed above, Plaintiffs allege that while Romero was employed and acting as a Director of Stamack, he created Citadel by using the Proprietary Information he had misappropriated from Stamack and by defaming Stamack to its clients and business contacts. As a result of Defendants' actions, Stamack has lost major clients, such as MLB.com and Bliss Spa. If

Defendants are not enjoined in their harmful conduct, Plaintiffs contend that they will suffer additional loss and irreparable harm to its reputation.

However, Plaintiffs' request that Defendants be enjoined from competing with them amounts to a request that Defendants' business be terminated. An injunction such as this will not be granted without a non-compete agreement that is reasonable in scope and duration. Furthermore, Plaintiffs never imposed anticompetitive covenants upon Defendants. (*See Mohawk Maintenance Co., Inc. v Kessler*, 52 N.Y.2d 276, 283 [1981]; *Alzheimer v Evarts*, 289 A.D.2d 1004 [4th Dep't 2001] ("In the absence of a covenant not to compete, plaintiffs are not barred from engaging in a competing business.")) If the Court granted such an injunction, it would challenge the strong public policy of people being able to engage in business that is most suitable to them. (*See Investor Access Corp. v Doremus & Co.*, 588 N.Y.S.2d 842, 845 [1st Dep't 1992].) Stamack has also failed to meet the pleading requirements for seeking a permanent injunction because it has not shown that it has no adequate remedy at law (i.e. damages), or that the equities are in its favor. Thus, the Court finds that a permanent injunction enjoining Defendants from competing with Stamack should be denied.

g. Injunctive Relief to Compel Return and Enjoin Use of Proprietary Information

New York courts have held that injunctive relief will be granted where there is evidence of harm and misappropriation of trade secrets by Defendants are shown. (*See, e.g., U.S. Reinsurance Corp. v Humphreys*, 205 A.D.2d 187 [1st Dep't 1994]; *Sylmark Holdings Limited et. al. v Silicone Zone Int'l Limited et. al.*, 783 N.Y.S.2d 758 [2004].) Stamack contends that Defendants wrongfully misappropriated the Proprietary Information that belonged to Stamack. Plaintiffs assert that this Information consisted of client and supplier contacts, which were non-public information and was the product of Stamack's time and resources. Additionally, Stamack

argues that Defendants used this Information to advance their business interests and to solicit Stamack's clients away for Citadel. However, Stamack is not entitled to injunctive relief to compel return and enjoin use of proprietary information because it has not identified the proprietary information that Defendants are alleged to have taken, it has not pled that materials were physically appropriated or copied, and it has not stated that this Information was not readily available to an outsider. Accordingly, the Court must deny injunctive relief to Stamack because it has insufficiently shown a violation of Plaintiffs' rights.


CONCLUSION

For the foregoing reasons, it is hereby,

ORDERED that Defendants' motion to dismiss the complaint is granted and the Clerk of the court is directed to enter judgment in favor of Defendants, dismissing the complaint against it, with costs and disbursements to Plaintiff as taxed by the Clerk.

Dated: August 8, 2007

ENTER:



RICHARD B. LOWE, III, J.S.C.
HON. RICHARD B. LOWE, III

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