Vergnion v United Legwear Co. LLC

2015 NY Slip Op 31257(U)

July 16, 2015

Supreme Court, New York County

Docket Number: 652362/12

Judge: Joan A. Madden

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[* 1]

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK: PART 11

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BENJAMIN VERGNION and JULIEN JONCHERE, INDEX NO. 652362/12

Plaintiffs,

-against-

UNITED LEGWEAR COMPANY LLC, ISAAC E. ASH, in his individual and corporate capacities, and CHRISTOPHER VOLPE, in his individual and corporate capacities,

Defendants.

---X

JOAN A. MADDEN, J.:

Defendants move for an order pursuant to CPLR 3212 granting summary judgment dismissing the complaint in its entirety, and plaintiffs oppose.

This case concerns a failed business proposal between the parties, who are involved in manufacturing and distributing "legwear" or socks. Plaintiffs Benjamin Vergnion and Julien Jonchere own and/or work for a company known as Happy Brands LLC ("Happy Brands"). Defendant Isaac E. Ash owns and is president and CEO of defendant United Legwear Company LLC ("United Legwear"), and defendant Christopher Volpe is the Chief Operating and Financial Officer of United Legwear.

It is undisputed that in June 2010, the parties began discussing a "business opportunity" and on June 30, 2010, they entered into a Confidentiality Agreement. It is unclear what happened in the interim, if anything, but in March or April 2011, discussions resumed when defendant Ash approached plaintiffs about joining United Legwear as employees at the

[* 2]

management level in charge of its "premium division." Plaintiffs allege that around the same time they were in the process of creating a new brand called Etiquette Clothiers, which they describe as a "global lifestyle brand focusing on underwear, sock and accessories made of the highest quality materials for men, women, children and babies." The complaint alleges that as "part of the discussions regarding plaintiffs joining ULC [United Legwear], defendant Ash required that ULC become the exclusive distributor of Etiquette products in North America," and that "Etiquette was to be included as the flagship brand for ULC's Premium Division." It is undisputed that plaintiffs were to provide United Legware with an exclusive license agreement for the Etiquette brand and products.

The record shows that from April to June 2011, the parties engaged in negotiations, including email exchanges. On June 10, 2011, defendant Volpe sent plaintiff Vergnion an email referring to "our meeting today" and memorializing the following "points discussed and agreed" as to United Legwear's "new division" and "new employees":

> New Division of United Legwear Co LLC – Luxe Brands
> Tretorn – License to be held within Janed LLC
> Etiquette – New licensing agreement for North America – Perpectual [sic] license term royalty structure to scale from lower rate to upper rate ceiling over 5 year term. Proposed royalty rate year 1 – 4% (year 1 ending 12/31/12).
>
> New Employees:
> 1. Benjamin Vergnion – Title – President/Creative Director Luxe Brands – United Legwear Co LLC – Employment Agreement
> 2. Julian Jonchere – Sales Manager Luxe Brands – United Legwear Co LLC – At Will Employee
> 3. Alex Cordero – Art Director Sales Manager Luxe Brands – United Legwear Co LLC – At Will Employee
> 4. Stephanie Ramos – Administrative Assistant – Luxe Brands – United Legwear Co LLC – At Will Employee

[* 3]

The June 10, 2011 email also detailed salaries and other compensation for each of the four new employees, and concluded by stating: "Assuming you are agreeable, please confirm and we will proceed from here with draft of documents." On June 12, 2011, Vergnion responded with the following email:

> Attached you will find my response to your June 10th email (word + pdf) Apologies for not sending this earlier but it took some time to discuss all points with the team as well as equity partners on Etiquette side... my comments are italicized in the doc. Also wanted to clarify a few point [sic] with you as mentioned in the letter – we can do this over the phone if easier as you are traveling. Keep me posted.

The next day, June 13, 2011, Volpe and Vergnion engaged in negotiations via the following email exchange:

> [Volpe at 1:09 p.m:]
> Benjamin. I will review your points with Isaac [Ash] and confirm back our position on each later today.
>
> [Vergnion at 1:30 p.m.]
> OK Chris. There is the issue of 40% gross margin we also need to discuss. Need more specifics on this point. Let's discuss when you are available.
>
> [Volpe at 1:34 p.m.]
> Gross margin = Gross Sales-Discounts/Allowances = Net Sales
> Net Sales – Cost of goods sold (inclusive of royalty) = Gross Margin
> To receive your override on sales must achieve 40% GM or higher based on above formula. Also sales to his threshold basis for you. Julian, sales must be over 40% GM. Sale below 40% are disqualified in formula calculation.
>
> [Vergnion at 2:21 p.m.]
> Which means that any off-price is disqualified... knowing how important off-price sales can be as a parallel market and given the economy I would like to consider a scenario when GM hit below 40%. I suggest removing ½ point if GM is below 40% & 30% and disqualify when below that level. Other issues to consider: euro level, cotton prices, fuel/shipping – all of these can easily bring the GM down especially on some lower margin items such as kids underwear/shirtwear. Your thoughts...

[* 4]

On June 14, 2011, Volpe and Vergnion continued negotiating by email:

> [Volpe at 10:02 a.m.]
> Benjamin, I have met with Isaac [Ash] and this is what we can offer in good faith:
> 1- benjamin - 400,000 base. Override after 400,000 in sales with Margin over 40 percent. 3 percent is override. All Ulc [United Legwear] benefits.
> 2- Julian - 100,000 base. Override after 240,000 in sales with margin over 40 percent. Override is 2 percent NOT 2.5. Up to 3,000,000 then drops to 1 percent override over 3,000,000 in sales with margin over 40 percent. All ULC [United Legwear] benefits.
> 3- alex – 100 base. Override of 1 percent after 240,000 in sales with margin over 40 percent. Cap at 5,000,000.
> 4- admim 40-42K plus ULC benefits.
> 5 - etiquette perpectual [sic] license [emphasis added]. Perpetually based on Benjamin being in business. Royalty structure 6 percent first year. Increasing 1 percent per year up to 10 percent fifth year, initial term 5 years. Renewal terms remain at 10 percent. Within licensing agreement a portion of royalty to be spent on advertising.
> This is a rich offer and Alex and Julian are entering a platform and available compensation well above what they achieve now.
> The JV structure is still pending to discuss beyond etiquette and tretorn.
> ULC [United Legwear] has no equity in tretorn or etiquette. All we achieve is retained gross marking netting to balance sheet after overhead. Your team is partnering in the same structure as we do with both brands. Except from a top line level with no bottom line liability. We also have all financial liability in building these two brands. This is an equitable offer and our best at this time. We will wait for your confirmation to proceed forward. Thanks as always for your partnership.
>
> [Vergnion at 3:49 p.m.]
> Chris/Isaac
> Thank you for taking the time to review all details of the offer. I am in agreement with your suggestions and excited to move forward with our partnership.
> My only requests would be to:
> 1) reallocate $10,000 from my base to Julien (total base $110,000)
> 2) reallocate $2,500 from my base to Admin (total base $44,500)
> 3) BGV [Benjamin Vergnion] revised base $387,500
> 4) the opportunity to review the commission structure based on my latest feedback after a successful 18 months track record
> Again looking forward to working together and thank you for the opportunity on behalf of the team here. Hope you having a fruitful trip so far – wish I was there with you guys!

[* 5]

> [Volpe at 3:52 p.m.]
> Agreed I will have documents drafted accordingly as far as employment agreement for you. Will send new hire paperwork to you for you, julien alex and admin person. I will need you to send me licensing agreement for etiquette asap.
>
> [Vergnion at 4:14 p.m.]
> Great - I will have the licensing agreement ready for you by end of next week - council [sic] is drafting it as we speak. In the meantime I will draft a very cohesive report of current situation and future objectives by brand so we can start being productive immediately. Keep you posted.

The following emails in the record date from June 23, 2011, when Volpe inquired: "Pls advise status of [Etiquette] licensing agreement." Vergnion replied: "My council [sic] is still working on it. As soon as it is ready I will forward it over to you. Hope your travels are going well" Volpe responded, "Thanks. Just landed from Asia." It is undisputed that on July 8, 2011, defendants telephoned plaintiffs and cancelled the deal.

On July 5, 2012, plaintiffs commenced this action seeking an unspecified amount of compensatory and punitive damages, based on eight causes of action for breach of express or implied contract, promissory estoppel, unjust enrichment, fraud, fraud in the inducement, misappropriation of trade secrets, unfair competition, and breach of confidentiality agreement. The complaint alleges that on June 14, 2011, the parties reached an agreement "in writing – which detailed the material terms of employment for Messrs. Vergnion and Jonchere, and their team," and that defendants breached such employment agreement. The complaint further alleges that defendants interfered with plaintiff's licensing agreement with a Swedish sock company known as Happy Socks, fraudulently induced plaintiffs to terminate their agreement with Happy Socks, used plaintiffs' confidential proprietary information as part of their "clandestine negotiations with Happy Socks," and used and continue to use "the extensive sales, marketing,

distribution, branding and design know-how that Mr. Vergnion shared with defendants subject to the Confidentiality Agreement."

Defendants answered asserting affirmative defenses of failure to state a cause of action, unclean hands, estoppel and the statute of frauds. Individual defendants Ash and Volpe assert a separate defense that they are not personally liable, as they were acting solely in their corporate capacities.

Defendants are now moving pursuant to CPLR 3212 for summary judgment dismissing the complaint in its entirety, and submit affidavits from Ash and Volpe, the pleadings, the parties' e-mail correspondence and other documents. Defendants contend plaintiffs "have failed to establish a prima facie case as to each cause of action" and that they "must allege the essential elements of each claim," citing Franklin v. Winard, 199 AD2d 220 (1st Dept 1993), which decided a motion to dismiss for failure to state a cause of action pursuant to CPLR 3211(a)(7). The bulk of defendants' motion identifies purported pleading defects or deficiencies in the complaint, and essentially seeks summary judgment grounds that the complaint fails to state a cause of action pursuant to CPLR 3211(a)(7) or certain claims do not comply with the pleading requirements of CPLR 3016(b). Individual defendants, Ash and Volpe, address the merits of the claims asserted against them personally, by submitting affidavits and contending that they were acting at all material times as officers and directors of the corporation, and are not parties to any binding agreement with plaintiffs.

In opposition, plaintiffs object that summary judgment is premature, since neither Ash nor Volpe has been deposed, and as a result plaintiffs do not possess the facts necessary to

[* 7]

oppose the motion. Plaintiffs also argue that material issues of fact exist as to each cause of action in the complaint, including whether individual defendants Ash and Volpe are personally liable for tortious acts.

Where as here defendants are moving for summary judgment pursuant to CPLR 3212 on the ground that the complaint fails to state a cause of action, the "application by its nature is not addressed solely to the pleadings" as is a pre-answer motion to dismiss pursuant to CPLR 3211(a)(7). Rather, on a summary judgment motion premised on CPLR 3211(a)(7), "failure to state a cause of action in pleadings would not be sufficient to permit unconditional summary judgment in favor of defendant, as a matter of law, if plaintiff's submissions provided evidentiary facts making out a cause of action." Lindquist v. County of Schoharie, 126 AD3d 1096, 1097 (3rd Dept 2015) (quoting Alvord & Swift v. Stewart M. Muller Construction Co. Inc, 46 NY2d 276, 280 [1978]). In this "unusual procedural setting," defendants are not required "to meet their customary statutory burden of establishing a prima facie right to judgment as a matter of law on the substantive merits" of plaintiffs claims. Id at 1097-1098. Instead, defendants will meet their burden on their procedural claims, which are addressed to the pleadings and not to the merits, "by identifying a defect in plaintiffs' complaint, and in this manner [will trigger] plaintiffs' obligation to reveal an evidentiary basis in its submissions that [is] sufficient to present facts curing the defect or supplying the deficiency." Id at 1098 (quoting Weinstein-Korn-Miller, NY Civ Prac ¶ 3212.10 [2nd ed 2014]).

Defendants have sustained their burden as to the 1st cause of action for breach of an express or implied employment contract. Defendants argue that the parties' emails show that

they engaged in only preliminary negotiations, and that the emails did not create a contract and cannot be construed as a signed writing. Defendants assert the June 14, 2011 emails simply represent a mutual understanding of the principal terms of the business deal that was made subject to and conditioned on legal documentation and the delivery of the Etiquette license agreement, which defendants characterize as the "cornerstone" of the proposal.

"To establish the existence of an enforceable agreement, a plaintiff must establish an offer, acceptance of the offer, consideration, mutual assent, and an intent to be bound." Kolchins v. Evolution Markets, Inc, 128 AD3d 47, 59 (1st Dept 2015). "That meeting of the minds must include agreement on all essential terms." Id. "In accordance with long-established principles, the existence of a binding contract is not dependent on the subjective intent" of either party, but rather it is necessary to look "to the objective manifestations of the intent of the parties as gathered by their expressed words and deeds." Brown Brothers Electrical Contractors, Inc v. Beam Construction Corp, 41 NY2d 397, 399 (1977). "In doing so, disproportionate emphasis is not to be put on any single act, phrase or other expression, but, instead, on the totality of all of these, given the attendant circumstances, the situation of the parties, and the objectives they were striving to attain." Id at 399-400.

Based on the parties' admitted emails, as quoted above, defendants have establish that the Etiquette license was intended to be a material and essential element of the parties' transaction, which was comprised of reciprocal agreements, namely United Legwear's agreement to employ plaintiffs as managers in its new luxury division and plaintiffs' agreement to provide United Legwear with a trademark license agreement for their brand known as "Etiquette Clothiers."

[* 9]

Since it is undisputed that plaintiffs never provided defendants with the Etiquette license agreement, the parties did not reach the point of forming a binding and enforceable employment contract. Specifically, Volpe's June 10, 2011 email to Vergnion explicitly listed the "new licensing agreement" with Etiquette as one of the "points discussed and agreed" at their meeting earlier that day, and detailed the royalty structure for the license agreement. On June 14, 2011, Volpe emailed Vergnion an "offer in good faith," that was comprised of four items pertaining to salaries and compensation for plaintiffs and two of their employees, and a fifth item addressing the Etiquette "perpetual license" with details as to the royalty structure. Volpe's email also referred to United Legware's having "financial liability in building" the Etiquette and Tretorn "brands." Vergnion replied with changes to only the salary items, and Volpe responded that he "agreed" and stated, "I will need you to send me licensing agreement for etiquette asap." Vergnion replied, "I will have the licensing agreement ready for you by end of next week - council [sic] is drafting it as we speak." More than a week later, on June 23, 2011, Volpe emailed Vergnion, "Pls advise status of [Etiquette] licensing agreement," and Vergnion responded, "My council [sic] is still working on it."

Plaintiffs fail to demonstrate a sufficient factual basis to support a finding as to the existence of an express or implied contract. Plaintiffs concede they did not provide defendants with the promised Etiquette licensing agreement, and their assertion that the employment agreement was "independent" from the licensing agreement between Etiquette and United Legwear is belied by the parties' clear and uncontroverted emails. Significantly, plaintiffs admit in the complaint that "[a]s part of the discussions regarding Plaintiffs joining ULC, Defendant

Ash required that ULC become the exclusive distributor of Etiquette products in North America," and that "Etiquette was to be included as the flagship brand for ULC's Premium Division." Thus, in the absence of the Etiquette license agreement, the parties did not intend to be bound, and did not have a binding and enforceable employment contract, either express or implied, and for that reason defendants are entitled to summary judgment dismissing the 1st cause of action. See e.g. Azimut-Benetti SpA v. Magnum Marine Corp, 55 AD3d 483, 484 (1st Dept 2008) (no valid claim of implied contract where purported contract indicates a lack of intent to be bound).

Defendants have likewise sustained their burden with respect to the 2nd cause of action for promissory estoppel. "To establish a claim for promissory estoppel, a plaintiff must allege '(1) a clear and unambiguous promise, (2) reasonable and foreseeable reliance by the party to whom the promise is made, and (3) an injury sustained in reliance on the promise.'" Sabre International Security, Ltd v. Vulcan Capital Management, Inc, 95 AD3d 434 (1st Dept 2012) (quoting Gurreri v. Associates Insurance Co, 248 AD2d 356 [2nd Dept 1998]). The second cause of action alleges that defendants promised plaintiffs management positions with United Legwear, and in reliance on that promise, plaintiffs terminated their company's licensing agreement with Happy Socks. Defendants argue that plaintiffs fail to allege a clear and unambiguous promise, or reasonable and foreseeable reliance. The court agrees. Plaintiffs rely solely on defendants' alleged promise to employ them. As determined above, the parties' emails demonstrate a lack of intent to be bound absent the Etiquette license agreement, so there could be no clear and unambiguous promise of employment without the Etiquette license agreement, and any reliance on such promise could not have been reasonable or foreseeable under the circumstances. See Azimut-

Benetti SpA v. Magnum Marine Corp, supra at 484. Thus, summary judgment dismissing the 2nd cause of action is granted.

Summary judgment is denied with respect to the 3rd cause of action for unjust enrichment. A plaintiff seeking damages for unjust enrichment must show that defendant was enriched at plaintiff's expense, and that it is against equity and good conscience to permit defendant to retain what is sought to be recovered. See Mandarin Trading Ltd v. Wildenstein, 16 NY3d 173, 182 (2011). "Unjust enrichment is a quasi-contract theory of recovery, and 'is an obligation imposed by equity to prevent injustice, in the absence of an actual agreement between the parties concerned.'" Georgia Malone & Co. Inc v. Rieder, 86 AD3d 406, 408 (1st Dept 2011) (quoting IDT Corp v. Morgan Stanley Dean Witter & Co, 12 NY3d 132, 142 [2009]).

Here, the complaint alleges that "as part" of plaintiffs' agreement with defendants, plaintiffs "terminated their company's lucrative licensing agreement with Happy Socks in order to enter into the contract with defendants," and that defendants "unjustly benefitted" when they "acquired for themselves a licensing agreement with Happy Socks – the very same agreement that ULC [United Legwear] induced Plaintiffs to terminate." Defendants argue plaintiffs have not alleged facts to support their allegation of inducement or show that it would be contrary to equity and good conscience to allow defendants to retain the benefits of the Happy Socks licensing agreement. In response, plaintiffs assert that they should have the opportunity to conduct depositions on these issues to develop additional facts to support their unjust enrichment claim, including but not limited to defendants' communications with Happy Socks, the resulting Happy Socks license agreement, and defendants' "distribution business in the top tier marketplace for Happy Socks." The court is persuaded that summary judgment dismissing the

unjust enrichment claim at this juncture is premature since it is undisputed that United Legwear entered into its own licensing agreement with Happy Socks, and neither Ash nor Volpe has been deposed. See CPLR 3212(b); Belziti v. Langford, 105 AD3d 646 (1st Dept 2013).

The motion is denied as to the 4th cause of action for fraud and the 5th cause of action for fraudulent inducement. Fraud consists of a material misrepresentation of a fact, knowledge of its falsity, an intent to induce reliance, justifiable reliance by plaintiff and damages. See Eurycleia Partners, LP v. Seward & Kissel, LLP, 12 NY3d 553, 559 (2009). The elements of fraudulent inducement are substantially the same. See Perrotti v. Becker, Glynn, Melamed & Muffly LLP, 82 AD3d 495 (1st Dept 2011). CPLR 3016(b) requires that a fraud claim be pleaded with particularity. See Eurycleia Partners, LP v. Seward & Kissel, LLP, supra at 559.

Here, the complaint alleges that "[a]s part of Defendants' effort to induce Plaintiffs to shut down their operations and terminate their exclusive distribution agreement with Happy Socks, Defendants entered into extensive negotiations with Mr. Vergnion over several months," and defendants' representations that plaintiffs would be hired in management positions at United Legwear and the specifics terms of their compensation "were all false." The complaint further alleges that defendants knew such representations were false and "intentionally deceived" plaintiffs, and that plaintiffs relied on such representations when they accepted defendants' offer and shut-down their operations, terminated their exclusive licensing agreement with Happy Socks, and shared their "confidential and proprietary information" with defendants.

Contrary to defendants' arguments, the foregoing allegations provide sufficient particularity to satisfy the pleading requirements of CPLR 3016(b), especially where as here "concrete facts 'are peculiarly within the knowledge of the party' charged with the fraud."

[* 13]

Pludeman v. Northern Leasing Systems, Inc, 10 NY3d 486 (2008) (quoting Jered Contracting Corp v. New York City Transit Authority, 22 NY2d 187, 194 [1968]). Moreover, since the fraud claims are based on the circumstances surrounding United Legwear's securing its own licensing agreement with Happy Socks, they are not duplicative of plaintiffs' claim for breach of the purported employment contract. Summary judgment as to the fraud claims is also premature, since plaintiffs have not had an opportunity to depose Ash and Volpe regarding their negotiations with Happy Socks and the resulting license agreement. See CPLR 3212(b); Belziti v. Langford, supra.

The motion is denied as to the 6th cause of action is for misappropriation of trade secrets, the 7th cause of action is for unfair competition, and the 8th cause of action for breach of the confidentiality agreement. A claim of unfair competition sounding in misappropriation usually concerns the taking and use of plaintiffs' property to compete against plaintiffs' own use of the same property. See ITC Ltd v. Punchgini, Inc, 9 NY3d 467, 468 (2007). A misappropriation claim may also concern the taking and use of plaintiffs' commercial advantage to compete against plaintiffs. Id.

Here, the complaint and plaintiffs' affidavit contain sufficient factual allegations to support the claims for misappropriation of trade secrets, unfair competition, and breach of the confidentiality agreement. See Redf-Organic Recovery, LLC v. Rainbow Disposal Co, Inc 116 AD3d 621 (1st Dept 2014). Specifically, plaintiffs allege defendants used plaintiffs "proprietary and confidential information to negotiate their own license agreement with Happy Socks," and defendants "misappropriated the roadmap [plaintiffs] disclosed to them – under the auspice of a Confidentiality Agreement – to enter into their own lucrative agreement with Happy Socks."

[* 14]

Plaintiffs further allege that on or about August 4, 2011, United Legwear "announced that it would become the U.S. licensee and distributor of the Happy Socks brand," which was the "exact relationship" plaintiffs' company, Happy Brands, had with Happy Socks. Plaintiffs allege that once defendants obtained plaintiffs' "business knowledge, they reneged on [plaintiffs'] employment and secured" the license with Happy Socks, and "then started a distribution business in the top tier marketplace for Happy Socks and other brands, based on [plaintiffs'] model which was shared with Defendants under the terms of the Confidentiality Agreement." To the extent defendants object that plaintiffs rely on "unsupported assertions," the facts necessary to support those assertions are peculiarly within defendants' knowledge, and for that reason summary judgment is premature since Ash and Volpe have not been deposed. See CPLR 3212(b); Belziti v. Langford, supra. Defendants' objections also raise issues of credibility that cannot be resolved on summary judgment. See Brown v. Kass, 91 AD3d 894 (2nd Dept 2012).

Finally, defendants seek to dismiss the complaint in its entirety as against individual defendants Ash and Volpe. Defendants argue the complaint fails to allege a factual or legal basis for imposing personal liability since it does not allege any specific wrongdoing against either Ash or Volpe, and contains no allegations to support piercing the corporate veil, or individual and independent tortious activity. In opposition, plaintiffs assert the complaint "describes in vivid detail" facts to support independent tortious activity, and any issue as to piercing the corporate veil is premature.

A corporate officer who "participates in the commission of a tort may be held individually liable, regardless of whether the officer acted on behalf of the corporation in the course of official duties and regardless of whether the corporate veil is pierced." Peguero v. 601

[* 15]

Realty Corp, 58 AD3d 556 (1st Dept 2009) (quoting Espinosa v. Rand, 24 AD3d 102 [1st Dept 2005]). Here, the complaint contains sufficient facts as to Ash and Volpe's active and personal participation in the alleged tortious activities in connection with the claims for fraud, misappropriation of trade secrets and unfair competition. The complaint alleges that Ash and Volpe were directly involved in the negotiations, which according to plaintiffs fraudulently induced them to cease their business operations and relinquish their license agreement with Happy Socks. The complaint also alleges that Ash and Volpe were directly involved in the disclosure and use of plaintiffs' confidential and proprietary information to secure United Legwear's license agreement with Happy Socks. The issue of piercing the corporate veil which is relevant to the claims for breach of contract, unjust enrichment and breach of the confidentiality agreement, is premature in the absence of discovery and depositions of Ash and Volpe. See CPLR 3212(b); Belziti v. Langford, supra. However, in view of the dismissal of the breach of contract claim as against all defendants including Ash and Volpe, the issue of piercing the corporate veil is moot at least with respect to that claim, but may still be viable in connection with the claims for unjust enrichment and breach of the confidentiality agreement. Thus, only the 1st and 2nd causes of action are dismissed as against Ash and Volpe.

Accordingly, it is

ORDERED that defendants' motion for summary judgment is granted only to the extent of dismissing the 1st and 2nd causes of action in their entirety as against all defendants, and the 1st and 2nd causes of action are severed and dismissed, and the Clerk is directed to enter judgment accordingly, and it is it is further

ORDERED that the motion in all other respects is denied, and the action shall continue as to the remaining causes of action; and it is further

ORDERED that the parties are directed to appear for the status conference previously scheduled for July 23, 2015 at 9:30 a.m., in Part 11, Room 351, 60 Centre Street.

DATED: July 16, 2015

ENTER:

J.S.C.

HON. JOAN A. MADDEN
J.S.C.