Turnage v Match Eyewear, LLC
2015 NY Slip Op 32634(U)
September 21, 2015
Supreme Court, Nassau County
Docket Number: 601971-15
Judge: Timothy S. Driscoll
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SUPREME COURT-STATE OF NEW YORK
SHORT FORM ORDER
Present:

HON. TIMOTHY S. DRISCOLL
Justice Supreme Court

----------x **TRIAL/IAS PART: 14**

PHILIP TURNAGE,

NASSAU COUNTY

Plaintiff,

Index No: 601971-15
Motion Seq. No. 1
Submission Date: 8/7/15

-against-

MATCH EYEWEAR, LLC, JONATHAN PRATT and ETHAN GOODMAN,

Defendants.

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Papers Read on this Motion:

Notice of Motion, Complaint and Exhibit.....x
Memorandum of Law in Support.....x
Affirmation in Opposition and Exhibit.....x
Memorandum of Law in Opposition.....x
Reply Memorandum of Law.....x

This matter is before the court on the motion filed by Defendants Match Eyewear, LLC ("Match"), Jonathan Pratt ("Pratt") and Ethan Goodman ("Goodman") ("Defendants") on April 21, 2015 and submitted on August 7, 2015. For the reasons set forth below, the Court 1) grants the motion to dismiss the second, third and fourth causes of action; 2) denies the motion to dismiss the fifth cause of action; and 3) grants the motion to dismiss the first cause of action, alleging breach of contract, but will permit Plaintiff to file an amended complaint asserting claims for breach of contract and for a declaratory judgment. The Court directs Plaintiff, if he so chooses, to file his amended complaint on or before October 16, 2015. **The conference scheduled before the Court is hereby adjourned from September 30, 2015 to October 20, 2015 at 9:30 a.m.**

BACKGROUND

A. Relief Sought

Defendants move for an Order, pursuant to CPLR §§ 3211(a)(1) and (7), dismissing the Verified Complaint ("Complaint").

Plaintiff Philip Turnage ("Turnage" or "Plaintiff") opposes the motion.

B. The Parties' History

The parties' history is outlined in detail in the prior decision ("Prior Decision") of the Court dated August 12, 2015 and the Court incorporates the Prior Decision by reference as if set forth in full herein. In the Prior Decision, the Court granted, to a limited extent, the prior motion ("Prior Motion") of Plaintiff seeking injunctive relief. As noted in the Prior Decision, the Complaint alleges as follows:

Match is a leading international manufacturer and distributor of superior quality eyewear and sun wear. Pratt was and still is the managing member of Match and Goodman was and still is a member and/or principal of Match. Turnage has been employed in the eyewear and sun wear industry for nearly 25 years, and has attained recognition and acclaim for his skills and abilities in those industries.

On or about February 1, 2012, Turnage and Match entered into an Employment Agreement (Ex. A to Comp.). In conjunction with the Employment Agreement, Turnage and Match are also parties to a Limited Liability Company Membership Unit Grant Agreement and Schedule 1 (Terms and Conditions of Employment Agreement), also annexed as part of Exhibit A to the Complaint. Pursuant to the Employment Agreement, Match retained Turnage as President of Sales and he has performed in that capacity since February 1, 2012. Plaintiff alleges that he has performed his obligations under the Employment Agreement, and helped Match grow and succeed in the eyewear and sun wear industries.

Plaintiff alleges that Match, through Pratt and Goodman, has engaged in improper conduct that causes Plaintiff concern regarding the value of his prospective interest in Match. That conduct includes, but is not limited to, 1) violating State and Federal tax laws by failing to report income and using Match funds to pay for personal expenses of employees and members; 2) misappropriating and failing to report cash income received at trade shows from overseas

accounts; 3) repeatedly misrepresenting to Plaintiff and Match's customers the source/country of origin of certain products sold and distributed by Match; and 4) converting and improperly using computer software and programs without paying required licensing and use fees. Plaintiff also alleges that Defendants have refused to make Match's books and records available to Plaintiff.

The Complaint contains five (5) causes of action: 1) Match, by and through Pratt and Goodman, breached the Agreements between the parties by failing to pay all compensation and remuneration due to Turnage, including bonuses, sales commissions and other compensation agreed to by the parties; 2) Defendants breached their implied covenant of good faith and fair dealing; 3) Defendants, through their actions, constructively discharged Plaintiff and, as a result of Defendants' constructive discharge of Turnage, Match may not properly enforce any restrictive covenant contained in the parties' agreements; 4) Pratt and Goodman, acting with malice and with the intent to cause Match to breach its agreements with Plaintiff, tortiously interfered with Plaintiff's agreements with Match; and 5) a request for a declaratory judgment stating that, by virtue of Defendants' alleged breaches of the agreements between the parties, any non-competition or non-solicitation provisions in the Agreements between the parties are unenforceable.

On May 11, 2015, the Court issued a temporary restraining order ("TRO") (Ex. C to Singer Aff. in Opp.) which directed that, pending a hearing and determination of this motion, Defendants are temporarily restrained from taking any further actions to bar Plaintiff from working in sales, design, production or manufacturing in the field of designer eye wear, provided that Plaintiff neither solicits nor initiates contact with Defendants' employees, clients, or customers. In the Prior Decision, the Court directed that the TRO issued by the Court on May 11, 2015 shall remain in effect, pending further court order, on the condition that Plaintiff post a bond in the sum of $25,000 on or before September 4, 2015.

Section 2.6 of the Terms and Conditions of Employment Agreement ("Terms and Conditions"), titled "Duty of Non-Competition; Non-Solicitation," provides as follows:

> In consideration for Company's continued employment of Executive and providing Executive with Confidential Information, the Executive agrees that (A) during the Term of Employment and for a period of twelve (12) months following the expiration or earlier termination thereof, the Executive shall not, directly or indirectly, without the express prior written consent of Company enter the employ of, or render any services to, any person, firm, corporation which is engaged in a "Competitive Business" or engage in any Competitive Business on Executive's own account or become interested in any such Competitive Business, directly or indirectly, as an individual, partner, shareholder, director, officer, principal, agent, employee, trustee, consultant, or in any other relationship or capacity (other than acquiring, solely as an investment, securities of any public corporation); or (B) during the Term of Employment and for a period of twenty-four (24) months following the expiration or earlier termination thereof, the Executive shall not, directly or indirectly, without the express prior written consent of Company solicit employees of Company to terminate their employment with Company and/or any subsidiary or affiliate of Company or hire any such employees or solicit business from customers or suppliers or anyone who was a customer or supplier during the preceding twelve (12) month period with Company, and/or any subsidiary or affiliate of Company (but in no event shall such prohibited solicitation apply to any persons or entities with whom the Permitted Business has conducted any business to the extent such solicitation is strictly for and in connection with the Permitted Business). Notwithstanding contrary, conflicting or contradictory clause or provision, Competitive Business shall also not include Executive's ownership of any business that otherwise qualifies as a Competitive Business but Executive's ownership of such business is less than 5% of the stock of a publicly-held corporation whose stock is traded on a national securities exchange or in the over-the-counter market.

In opposition to the motion, Plaintiff relies in part on his May 7, 2015 affidavit (Ex. A to Singer Aff. in Opp.), which was submitted in support of the Prior Motion. As noted in the Prior Decision, Turnage submits that the restrictive covenant ("Restrictive Covenant") in the Employment Agreement is too restrictive and is preventing Turnage from earning a living. Turnage also submits that the Restrictive Covenant should not be enforced against him because Defendants' conduct constituted a constructive discharge of Turnage's employment as of January 6, 2015. Turnage affirms that he has been employed in the eyewear and sun wear industry for nearly 25 years and, while he is proficient at his job, he submits that his abilities are not "unique or extraordinary" (Turnage Aff. in Supp. at ¶ 5; quotation marks in original).

Turnage affirms the truth of the allegations in the Complaint regarding Defendants' allegedly improper conduct. Turnage also affirms that, as a result of Defendants' misrepresentations regarding where the Match products were manufactured, Plaintiff made misrepresentations to his client base which jeopardized his reputation.

C. The Parties' Positions

Defendants submit that the first cause of action is insufficient because it alleges that Match breached both the Employment Agreement and the Limited Liability Company Membership Unit Grant Agreement ("LLC Agreement"), both of which contain provisions relating to "compensation and remuneration" (Ds' Memo. of Law in Supp. at p. 7) and addressing subjects including wages, bonuses, expense reimbursements, non-incentive compensation, equity incentive compensation, severance and the grant of LLC Membership Units. Thus, Defendants contend, Plaintiff has failed to identify which contractual provisions were breached, and does not provide Match with notice of the transactions or occurrences on which his breach of contract claim is based.

Defendants also argue that the employment at-will doctrine requires dismissal of the second, third and fourth causes of action. As Plaintiff's Employment Agreement does not contain a fixed term of employment, [1] Plaintiff may resign, or Match may discharge him, at any time and for any lawful reason. Thus, Plaintiff's written employment relationship with Match is an employment at-will and Plaintiff should not be permitted to make "an end-run around the employment at-will doctrine" (Ds' Memo. of Law in Supp. at p. 8) by recasting claims based on his termination as tort and quasi-contract claims, like those pleaded in the second, third and fourth causes of action. As those causes of action all allege injury arising solely out of his separation from employment with Match, Defendants contend, they should be dismissed.

Defendants submit, further, that 1) the second cause of action, alleging a breach of the implied covenant of good faith and fair dealing, is duplicative of the breach of contract claim; 2) Plaintiff has failed to allege facts sufficient to support the third cause of action for constructive discharge; 3) the fourth cause of action, alleging tortious interference with contract against Pratt

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[1] Defendants note that the LLC Agreement never became operative and, in any event, contains no reference to the term of employment (Ds Memo. of Law in Supp. at n. 7).

and Goodman, Match's principals, is not viable because Plaintiff has failed to allege that Goodman or Pratt interfered with Plaintiff's contractual right to compensation, other than in their capacities as owners and officers of Match; and 4) the fifth cause of action, seeking a declaratory judgment, is subject to dismissal, *inter alia*, because a) the parts of the claim based on Plaintiff's claim that the Restrictive Covenant is unenforceable is duplicative of the causes of action for breach of contract and constructive discharge; and b) Plaintiff has an adequate, alternative remedy through his breach of contract claim.

Plaintiff opposes the motion submitting that 1) Plaintiff has properly pleaded his breach of contract claim by annexing the Employment Agreement and LLC Agreement to the Complaint; 2) the second cause of action, alleging a breach of the implied covenant of good faith and fair dealing, is not duplicative of the breach of contract claim because it "alleges actions on the part of Defendants that served to deprive Plaintiff of the right and opportunity to receive the benefits under the parties' Agreement(s) including, but not necessarily limited to, a vested ownership interest in Defendant Match" (P's Memo. of Law in Opp. at p. 6); 3) the third cause of action, alleging constructive discharge, is sufficient in light of Plaintiff's allegations, *inter alia*, that Defendants failed to inform Plaintiff that certain frames represented to be manufactured in Italy were in fact manufactured in China which resulted in Plaintiff making misrepresentations to his client base, thereby placing his reputation in jeopardy, as well as other allegations in the Complaint (*see* Comp. at ¶¶ 13-14); 4) the third cause of action for constructive discharge is not precluded by the employment at-will doctrine, in part because the Employment Agreement has a specific term of duration, as set forth on page 1, which provides for a "Term Commencement Date" of February 1, 2012 and defines a "Term of Employment" as being "the period commencing on the Term Commencement Date and ending on the fourth (4^{th}) anniversary of the date thereof..." (P's Memo. of Law in Opp. at p. 10); 5) Plaintiff has adequately pleaded tortious interference with contract by alleging a) the existence of a valid contract between Turnage and Match, b) Pratt and Goodman's knowledge of the contract's existence, c) Pratt and Goodman's inducement of Match to breach the agreement(s) with Turnage, d) Match's breach of its agreement(s) with Turnage, e) resulting damages and f) that Pratt and Goodman acted with malice and with the intent to cause Match to breach its agreements with Plaintiff; and 6) the fifth

cause of action, for a declaratory judgment, is appropriate because Turnage has alleged an actual and justiciable controversy between the parties and requests that the Court declare the rights of the parties with respect to the enforceability of any non-competition or non-solicitation provisions in the parties' agreements.

In reply, Defendants submit *inter alia* that 1) Plaintiff was clearly an at-will employee because Plaintiff was free to resign, which he did, and Match was free to discharge Plaintiff, at any time and for any lawful reason, and Plaintiff should not by permitted to assert wrongful termination claims "dressed up as quasi-contractual causes of action" (Ds' Reply Memo. of Law at p. 3); 2) the breach of contract claim is insufficient because Plaintiff is required to identify the provisions of the contract that were breached, and it is not sufficient that Plaintiff has attached the Employment Agreement and LLC Agreement to the Complaint; 3) the cause of action for breach of the implied covenant of good faith and fair dealing is clearly duplicative of the breach of contract cause of action because it is based solely on the factual allegations recited in the breach of contract claim; 4) Plaintiff has not alleged facts sufficient to support a constructive discharge claim; and 5) Plaintiff has failed to satisfy the heightened pleading standard for the tortious interference claim applicable to claims that owners and officers of corporations tortiously interfered with contracts between their corporation and a third party.

RULING OF THE COURT

A. Dismissal Standards

In considering a motion to dismiss for failure to state a cause of action pursuant to CPLR § 3211(a)(7), the court must accept the facts as alleged in the complaint as true, accord plaintiffs the benefit of every possible favorable inference, and determine only whether the facts as alleged fit within any cognizable legal theory. *Bivona v. Danna & Associates, P.C.*, 123 A.D.3d 956, 957 (2d Dept. 2014), quoting *Alva v. Gaines, Gruner, Ponzini & Novick, LLP*, 121 A.D.3d 724 (2d Dept. 2014) (internal quotation marks omitted) and citing *Leon v. Martinez*, 84 N.Y.2d 83, 87-88 (1994).

A motion to dismiss a cause of action pursuant to CPLR § 3211(a)(1) may be granted only if documentary evidence utterly refutes the plaintiff's factual allegations, thereby conclusively establishing a defense as a matter of law. *Bivona v. Danna & Associates, P.C.*, 123

A.D.3d at 957, citing *Indymac Venture, LLC v. Nagessar*, 121 A.D.3d 945 (2d Dept. 2014), quoting *Whitebox Concentrated Convertible Arbitrage Partners, L.P. v. Superior Well Servs., Inc.*, 20 N.Y.3d 59, 63 (2012).

B. Applicable Causes of Action

The essential elements of a cause of action to recover damages for breach of contract are the existence of a contract, the plaintiff's performance pursuant to the contract, the defendant's breach of its contractual obligations, and damages resulting from the breach. *El-Nahal v. FA Management, Inc.*, 126 A.D.3d 667, 668 (2d Dept. 2015) citing, *inter alia*, *Dee v. Rakower*, 112 A.D.3d 204, 208-209 (2d Dept. 2013). To state a cause of action to recover damages for a breach of contract, the plaintiff's allegations must identify the provisions of the contract that were breached. *Barker v. Time Warner Cable, Inc.*, 83 A.D.3d 750, 751 (2d Dept. 2011) citing, *inter alia*, *Peters v. Accurate Bldg. Inspectors Div. of Ubell Enters., Inc.*, 29 A.D.3d 972 (2d Dept. 2006).

Implicit in every contract is a covenant of good faith and fair dealing which encompasses any promises that a reasonable promisee would understand to be included. *Staffenberg v. Fairfield Pagma Assocs.*, 95 A.D.3d 873, 875 (2d Dept. 2012), citing *New York Univ. v. Continental Ins. Co.*, 87 N.Y.2d 308, 318 (1995). The duty of good faith and fair dealing, however, is not without limits, and no obligation can be implied that would be inconsistent with other terms of the contractual relationship. *Staffenberg v. Fairfield Pagma Assocs.*, 95 A.D.3d at 875, citing *Dalton v. Educational Testing Serv.*, 87 N.Y.2d 384, 389 (1995), quoting *Murphy v. American Home Prods. Corp.*, 58 N.Y.2d 293, 304 (1983).

Constructive discharge occurs when the employer, rather than acting directly, deliberately makes an employee's working conditions so intolerable that the employee is forced into an involuntary resignation. *Bielby v. Middaugh*, 120 A.D.3d 896, 899 (4th Dept. 2014), quoting *Morris v. Schroder Capital Mgt. Intl.*, 7 N.Y.3d 616, 621-622 (2006) (internal quotation marks omitted).

A party claiming tortious interference with contractual relations must establish the following elements: 1) the existence of a valid contract with a third party, 2) defendants' knowledge of the contract, 3) defendants' intentional procurement of the third party's breach of

the contract without justification, 4) actual breach of the contract, and 5) damages resulting therefrom. *Lama Holding Co. v. Smith Barney*, 88 N.Y.2d 413, 424 (1996). When an officer or director acts on behalf of his corporation, he may not be held liable for inducing the corporation to violate its contractual obligations unless his activity involves separate tortious conduct or results in personal profit. *Stern v. DiMarzo, Inc.*, 77 A.D.3d 730, 731 (2d Dept. 2010), quoting *Di Nardo v. L & W Indus. Park of Buffalo*, 74 A.D.2d 736 (4th Dept. 1980).

Declaratory relief is usually unnecessary where a full and adequate remedy is already provided by another well-known form of action. *James v. Alderton Dock Yards*, 256 N.Y. 298, 305 (1931), *reh. den.*, 256 N.Y. 681 (1931). *See also Olsen v. New York State Dept. of Env. Conservation*, 307 A.D.2d 595 (3d Dept. 2003), *lv. app. den.*, 1 N.Y.3d 502 (2003) (action for declaratory judgment unnecessary where action at law for damages is available, citing *inter alia James v. Alderton Dock Yards*, 256 N.Y. at 305). The decision to entertain an action for declaratory judgment is a matter committed to the sound discretion of Supreme Court, which may decline to consider such relief where other adequate remedies are available. *Clarity Connect, Inc. v. AT&T Corp.*, 15 A.D.3d 767 (3d Dept. 2005), citing CPLR § 3001; *Matter of Morgenthau v. Erlbaum*, 59 N.Y.2d 143, 148 (1983), *cert. den.*, 464 U.S. 993 (1983).

C. Employment At -Will Doctrine

In New York, it is well settled that where an employment is for an indefinite term it is presumed to be a hiring at will which may be freely terminated by either party at any time for any reason or even for no reason. *O'Neill v. New York University*, 97 A.D.3d 199, 210 (1st Dept. 2012), citing *Wieder v. Skala*, 80 N.Y.2d 628, 633 (1992), quoting *Murphy v. American Home Prods. Corp.*, 58 N.Y.2d 293, 300 (1983). An employee may rebut this presumption if he demonstrates that his employer made him aware of an express written policy limiting the employer's right of discharge and that the employee relied on that policy to his detriment. *O'Neill v. New York University*, 97 A.D.3d at 210, quoting *Matter of De Petris v. Union Settlement Assn.*, 86 N.Y.2d 406, 410 (1995), citing *Weiner v. McGraw-Hill, Inc.*, 57 N.Y.2d 458, 465-466 (1982).

The Court of Appeals recognized a further limited implied-in-law exception to at-will employment, in *Wieder*, where the employee, an attorney, had a duty to report unethical behavior that was at the very core and, indeed, the only purpose of his association with the defendants. *O'Neill v. New York University*, 97 A.D.3d at 210, quoting *Wieder v. Skala*, 80 N.Y.2d at 635. Courts have declined to extend the *Wieder* exception beyond the unique characteristics of the legal profession. *O'Neill v. New York University*, 97 A.D.3d at 210-211, quoting *Mulder v. Donaldson, Lufkin & Jenrette*, 208 A.D.2d 301, 306-307. In *Mulder*, the Court recognized the potential for a cause of action for breach of express contract based on a provision in the defendant's employment manual which specifically provided that an employee who reports wrongdoing will be protected against reprisals. *O'Neill v. New York University*, 97 A.D.3d at 211, citing *Sullivan v. Harnisch*, 81 A.D.3d 117, 124 (1st Dept. 2010), *aff'd*, 19 N.Y.3d 259 (2012), quoting *Mulder v. Donaldson, Lufkin & Jenrette*, 208 A.D.2d at 307.

Non-compete clauses are enforceable even when the employment contract is terminable at-will. *Barbagallo v. Marcum LLP*, 820 F. Supp. 2d 429, 444 (E.D.N.Y. 2011), citing *Zellner v. Stephen D. Conrad*, 183 A.D.2d 250 (2d Dept. 1992).

D. Restrictive Covenants

Restrictive covenants contained in employment contracts are disfavored by the courts and are to be enforced only if reasonably limited temporally and geographically, and to the extent necessary to protect the employer's use of trade secrets or confidential customer information. *Gilman & Ciocia, Inc. v. Randello*, 55 A.D.3d 871, 872 (2d Dept. 2008). Covenants not to compete will be enforced if reasonably limited as to time, geographic area, and scope, are necessary to protect the employer's interests, not harmful to the public, and not unduly burdensome. *M.H. Mandelbaum Orthotic & Prosthetic Services, Inc.*, 126 A.D.3d 859, 860 (2d Dept. 2015), quoting *Ricca v. Ouzounian*, 51 A.D.3d 997, 998 (2d Dept. 2008) and citing *BDO Seidman v. Hirshberg*, 93 N.Y.2d 382, 389 (1999); *Arthur J. Gallagher & Co. v. Marchese*, 96 A.D.3d 791, 792 (2d Dept. 2012).

A restrictive covenant in an employment agreement will only be enforceable if, *inter alia*, it is necessary to protect the employer's legitimate interests. *Arthur J. Gallagher & Co. v.*

Marchese, 96 A.D.3d 791, 792 (2d Dept. 2012) citing *BDO Seidman v. Hirshberg*, 93 N.Y.2d at 388-389; *Reed, Roberts Assoc. v. Strauman*, 40 N.Y.2d 303, 307 (1976). An employer's interests justifying a restrictive covenant are limited to the protection against misappropriation of the employer's trade secrets or of confidential customer lists, or protection from competition by a former employee whose services are unique or extraordinary. *Arthur J. Gallagher & Co. v. Marchese*, 96 A.D.3d at 792, quoting *BDO Seidman v. Hirshberg*, 93 N.Y.2d at 389. In addition, the employer has a legitimate interest in preventing former employees from exploiting or appropriating the goodwill of a client or customer, which had been created and maintained at the employer's expense, to the employer's competitive detriment. *Arthur J. Gallagher & Co. v. Marchese*, 96 A.D.3d at 792, quoting *BDO Seidman v. Hirshberg*, 93 N.Y.2d at 392.

E. Application of these Principles to the Instant Action

Preliminarily, the Court concludes that Plaintiff was an at-will employee. Plaintiff has cited only a portion of the "Term of Employment" provision in the Employment Agreement (*see* P's Memo. of Law in Opp. at p. 10) in support of his contention that the Employment Agreement has a specific term of duration. Term of Employment is defined, in full, as follows: "The period commencing on the Term Commencement Date and ending on the fourth (4th) anniversary of the date thereof *or such earlier date upon which Executive's employment with the Company terminates (for any reason)*" (emphasis added). Thus, this provision does not support the conclusion that the Employment Agreement has a specific term of duration, particularly in light of the language "or such earlier date" and the reference to the termination of Plaintiff's employment "for any reason." Moreover, unlike the attorney in *Wieder v. Skala*, discussed herein, Plaintiff's employment did not contemplate his reporting improper behavior, and there was no agreement limiting Defendants' right to discharge Plaintiff if he reported improper behavior. Accordingly, there is no applicable exception to the employment at-will doctrine.

The Court 1) dismisses the second cause of action, alleging a breach of the implied covenant of good faith and fair dealing, based on the Court's conclusion that it is duplicative of the breach of contract cause of action; 2) dismisses the third cause of action, alleging constructive discharge, both because the allegations are not sufficiently egregious to establish this cause of action and because Plaintiff's at-will employment status precludes this cause of action; and 3) dismisses the fourth cause of action because Plaintiff has not pleaded sufficient

facts to establish that the conduct of the individual Defendants involved separate tortious conduct or resulted in personal profit. The Court denies the motion to dismiss the fifth cause of action, for a declaratory judgment, based on its conclusion that this cause of action is appropriate in light of the issues regarding the enforceability of the restrictive covenant. The Court agrees that the first cause of action, alleging breach of contract, is insufficient because it alleges a breach of two separate agreements without providing Defendants with adequate notice of the provision(s) of those agreements that were allegedly breached. In consideration of the liberal amendment policy, however, the Court will permit Plaintiff to file an amended complaint asserting claims for breach of contract and for a declaratory judgment.

The Court directs Plaintiff, if he so chooses, to file his amended complaint on or before October 16, 2015. **The conference scheduled before the Court is hereby adjourned from September 30, 2015 to October 20, 2015 at 9:30 a.m.**

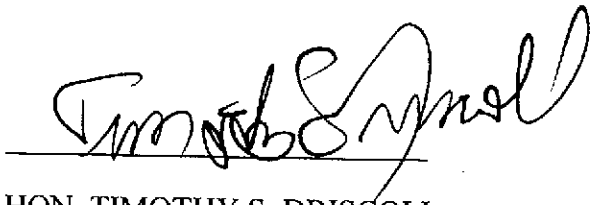
All matters not decided herein are hereby denied.

This constitutes the decision and order of the Court.

ENTER

DATED: Mineola, NY

September 21, 2015



HON. TIMOTHY S. DRISCOLL

J.S.C.