SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY

PRESENT: HON. ANDREA MASLEY PART IAS MOTION 48EFM

Justice

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MARSH & MCLENNAN COMPANIES, INC., and GUY CARPENTER & COMPANY, LLC,

Plaintiffs,

- v -

KEVIN FELDMAN, TIGERRISK PARTNERS, LLC, and ELLIOTT FREER

Defendants.

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INDEX NO. 652284/2019

MOTION DATE

MOTION SEQ. NO. 001 002 003

DECISION + ORDER ON MOTION

MASLEY, J.:

The following e-filed documents, listed by NYSCEF document number (Motion 001) 2, 25, 28, 29, 30, 31, 32, 33, 34, 35, 36, 37, 38, 39, 45, 64, 65, 66, 67, 68, 69

were read on this motion to/for INJUNCTION/RESTRAINING ORDER.

The following e-filed documents, listed by NYSCEF document number (Motion 002) 15, 16, 17, 18, 19, 20, 21, 22, 26, 40, 41, 42, 43, 44, 46, 70, 71

were read on this motion to/for INJUNCTION/RESTRAINING ORDER.

The following e-filed documents, listed by NYSCEF document number (Motion 003) 53, 54, 55, 56, 57, 61, 62

were read on this motion to/for DISMISSAL.

Background

Plaintiff Guy Carpenter & Company, LLC (GC), a subsidiary of plaintiff Marsh & Mclennan Companies, Inc. (MM), operates in the reinsurance brokerage business. (NYSCEF Doc. No. 14, Amended Complaint at ¶¶ 9, 10.) In 2009, GC acquired a reinsurance brokerage company that employed defendant Kevin Feldman. (*Id.* at ¶ 14.) Feldman and GC allegedly entered into a Notification, Non-Solicitation and Confidentiality Agreement (Agreement) on March 30, 2012. (*Id.* at ¶ 15.) Under the Agreement, Feldman agreed that, should he intend to terminate his employment with

GC, he would provide 60 days prior written notice of his intention. (NYSCEF Doc. No. 8, Agreement at 1.) For the duration of this 60-day notice period, Feldman agreed to remain an employee of GC, and perform his regular duties. (*Id.*) Feldman further agreed that for one year from his termination, he would not solicit or accept business of the type offered by GC, or perform services related to such type of business from or for clients or prospects of GC or its affiliates. (*Id.* at 2.) Prospects, as defined in the Agreement, are any prospective client or customer who Feldman solicited, participated in the solicitation of, or supervised the solicitation of at anytime during the twelve months preceding the termination of his employment. (*Id.*) Within that one year, Feldman also agreed not to solicit or encourage any employee of GC or its affiliates to terminate his or her employment with GC or its affiliates. (*Id.*) The Agreement also provides that during, and subsequent to his employment with GC, Feldman would not use or disclose confidential information. (*Id.* at 2-3.) Indeed, the Agreement states that Feldman is not to use his knowledge of confidential information or trade secrets for personal gain. (*Id.* at 5.)

In February 2018, Feldman and MM entered into a Restrictive Covenants Agreement (RCA), the execution of which was a condition precedent to Feldman's exercise of certain stock options. (NYSCEF Doc. No. 9, RCA at 1.) Under the RCA, Feldman agreed that in the year following his separation from GC, he would not use confidential information or trade secrets to solicit clients or prospective clients of MM or its subsidiaries with whom Feldman had contact with during the two years prior to his separation. (*Id.* at 2.) Feldman also agreed that in the year following his separation from GC, he would not use confidential information or trade secrets to solicit any employee of MM or its affiliates with whom he made contact with during the last two

years of his employment. (*Id.*) Feldman also agreed that, during and subsequent to his employment with GC, he would not use or disclose any confidential information such as client and personnel information. (*Id.* at 2-3.)

On April 2, 2019, Feldman submitted a voluntary notice of resignation from his employment with GC. (NYSCEF Doc. No. 6, Resignation Letter; NYSCEF Doc. No. 14, Amended Complaint at ¶ 61.) He allegedly stated that he would not be "staying employed" at GC, and that he accepted a position with defendant TigerRisk Partners, LLC (TR). (*Id.*) TR, an alleged competitor of GC, also provides reinsurance brokerage services. (NYSCEF Doc. No. 14, Amended Complaint at ¶ 13.) On April 8, 2019, TR announced that it hired Feldman as a partner. (*Id.* at ¶ 65.) Following his resignation, Feldman, allegedly on behalf of himself and TR, solicited GC's clients. For purposes of this motion, the court refers to these individuals as Client A, Client B, Client C, and Client D. (*Id.* at ¶¶ 82, 89, 94, 99.) Feldman also allegedly solicited GC employee, defendant Elliot Freer, for the purpose of encouraging Freer to resign. (*Id.* at ¶ 81.) Freer, who had entered into a similar non-solicitation and confidentiality agreement with GC, resigned on April 19, 2019. (*Id.* ¶¶ at 41-44) He allegedly did not honor a 60-day notice provision contained in his contract with GC. (*Id.* at ¶ 70.) Accordingly, GC and MM commenced this action against Feldman, Freer, and TR for breach of contract, misappropriation of trade secrets, breach of the duty of loyalty, tortious interference with contract, and unfair competition.

Motion Sequence Number 003[1]

In motion sequence number 003, TR moves, pursuant to CPLR 3211 (a) (8), to dismiss the complaint for lack of personal jurisdiction. Whereas TR argues that this court lacks personal jurisdiction, plaintiffs maintain that they have alleged a sufficient basis for long-arm jurisdiction under CPLR 302 (a) (3).

CPLR 3211 (a) (8) provides that "[a] party may move for judgment dismissing one or more causes of action asserted against him on the ground that ... the court has not jurisdiction of the person of the defendant." "On a motion to dismiss pursuant to CPLR 3211 (a) (8), the plaintiff has the burden of presenting sufficient evidence, through affidavits and relevant documents, to demonstrate jurisdiction." (*Coast to Coast Energy, Inc. v Gasarch*, 149 AD3d 485, 486 [1st Dept 2017][citations omitted].) Additionally, the court must accept as true the allegations set forth in the complaint and accord the plaintiff the benefit of every favorable inference. (*Wilson v Dantas*, 128 AD3d 176, 182 [1st Dept 2015].)

New York's Long-Arm Statute

"To determine whether a non-domiciliary may be sued in New York, we first determine whether our long arm statute (CPLR 302) confers jurisdiction over it in light of its contacts with this State. If the defendant's relationship with New York falls within the terms of CPLR 302, we determine whether the exercise of jurisdiction comports with due process." (*LaMarca v Pak-Mor Mfg. Co.*, 95 NY2d 210, 214 [2000][citations omitted].) A basis for long-arm jurisdiction exists when a plaintiff alleges that,

[1] The motions are considered out of turn for the purpose of addressing jurisdiction first. The court notes that TR initially raised jurisdictional arguments in opposition to Motion Sequence Number 001, and subsequently, raised them on motion sequence number 003 to dismiss for lack of personal jurisdiction.

> "(1) the defendant committed a tortious act outside New York; (2) the cause of action arose from that act; (3) the tortious act caused an injury to a person or property in New York; (4) the defendant expected or should reasonably have expected the act to have consequences in New York; and (5) the defendant derived substantial revenue from interstate or international commerce."

(*Penguin Group (USA) Inc. v American Buddha*, 16 NY3d 295, 302 [2011].)

Plaintiffs fail to allege or show the third element: that TR's tortious act caused or will cause an injury in New York. (*Sybron Corp. v Wetzel*, 46 NY2d 197, 205 [1978].) In *Sybron Corp v Wetzel*, the court determined that "Sybron sustained a sufficiently direct injury in New York to support jurisdiction" because Sybron "had alleged that it acquired the trade secrets at issue in New York and, further that the defendant's unfair competition threatened to pilfer Sybron's significant New York customers." (*Penguin Group (USA) Inc. v American Buddha*, 16 NY3d 295, 303 [2011].) Here, however, plaintiffs fail to allege or show that they acquired the trade secrets at issue in New York. Plaintiffs also fail to allege or show threatened harm to important New York customers. Although GC and MM allegedly have principal places of business in New York County (NYSCEF Doc. No. 14 at ¶¶ 2-3), these allegations are insufficient because "remote injuries located in New York solely because of domicile or incorporation ... do not satisfy CPLR 302." (*Sybron*, 46 NY2d at 205.)

Similarly, plaintiffs fail to allege or show the fourth element: that TR, with its principal place of business in Connecticut, expected or reasonably should have expected its alleged tortious acts concerning California based Feldman and Freer to have consequences in New York. Where the only possible connection between the claim and any foreseeable consequence in New York is the fact that the plaintiff is incorporated and maintains offices there, a sufficient predicate for jurisdiction is not

shown. (*Fantis Foods v Standard Importing Co.*, 49 NY2d 317, 49 NY2d 317 [1980].) Without any additional allegations, affidavits or documents that elaborate further, plaintiffs submissions indicate that the only possible connection between TR's tortious acts and any foreseeable consequence in New York is the result of plaintiffs' principle places of business being located in New York County. (NYSCEF Doc. No. 14 at ¶¶ 2-3.) Therefore, plaintiffs fail to show a sufficient predicate for jurisdiction over TR.

Because two elements have not been met, the court declines to consider the fifth element, and federal due process insofar as such inquiries are rendered academic. (*Penguin Group (USA)*, 16 NY3d at 302 ["If these five elements are met, a court must then assess whether a finding of personal jurisdiction satisfies federal due process."] Ultimately, New York's long arm statute does not confer jurisdiction over TR in light of TR's contacts with this state. TR's motion to dismiss is granted.

Motion Sequence Number 001

In motion sequence number 001, MM and GC move to enjoin Feldman from (1) breaching the notice of termination obligation in the Agreement, (2) soliciting or accepting reinsurance business from GC's clients or prospective clients, (3) encouraging GC's employees to terminate their employment, (4) using or disclosing GC's confidential information or trade secrets, (5) breaching his obligations under the RCA, (6) using confidential information and trade secrets to solicit MM's clients or prospective clients for the purpose of selling or providing insurance, (7) using or disclosing MM's confidential information or trade secrets, (8), soliciting MM's employees for the purpose of encouraging their resignation, (9) breaching his duty of loyalty, (10) misappropriating GC and MM's confidential information, and (11) engaging in unfair competition. (NYSCEF Doc. No. 25 at 1-3.)

MM and GC also move to enjoin TR from (1) inducing Feldman's breach of the Agreement, (2) inducing the breach of Feldman's duty of loyalty, (3) soliciting any client or prospective client of the plaintiffs for the purpose of selling or providing insurance services of the type sold or provided by Feldman while employed by GC, (4) using or disclosing any of the plaintiffs confidential information, and (5) unfairly competing with the plaintiffs. (*Id.* at 3-4.) However, this portion of the motion is denied as this court has no jurisdiction over TR.

"A preliminary injunction is an extraordinary provisional remedy which will only issue where the proponent demonstrates (1) a likelihood of success on the merits, (2) irreparable injury absent a preliminary injunction, and (3) a balance of equities tipping in its favor." (*Harris v Patients Med., P.C.*, 169 AD3d 433, 434 [1st Dept 2019][citations omitted].) With respect to the first factor, "to establish a likelihood of success on the merits, 'a prima facie showing of a reasonable probability of success is sufficient; actual proof of the petitioner's claims should be left to a full hearing on the merits.' A likelihood of success on the merits may be sufficiently established even where the facts are in dispute and the evidence need not be conclusive." (*Barbes Rest. Inc. v ASRR Suzer 218*, LLC, 140 AD3d 430, 431 [1st Dept 2016][citations omitted].) With respect to the 2nd factor, "[a] quantifiable remedy precludes a finding of irreparable harm." (*U.S. Re Cos., Inc. v Scheerer*, 41 AD3d 152, 155 [1st Dept 2007][citations omitted].) Accordingly, "[d]amages compensable in money and capable of calculation, albeit with some difficulty, are not irreparable." (*SportsChannel America Associates v National Hockey League*, 186 AD2d 417, 418 [1st Dept 1992][citations omitted].) With respect to the third factor of balancing the equities, "the harm to plaintiff from denial of the injunction as against the harm to defendant from granting it" must "tip in plaintiff's favor"

for an injunction to issue. (*Edgeworth Food Corp. v Stephenson*, 53 AD2d 588, 588 [1st Dept 1976].)

Likelihood of Success on the Merits

Forum Selection and Choice of Law Clauses

Preliminarily, the New York forum selection clauses in the Agreement and RCA are enforceable. "Forum selection clauses are enforced because they provide certainty and predictability in the resolution of disputes." (*Boss v American Express Fin. Advisors, Inc.*, 6 NY3d 242, 247 [2006][internal quotation marks and citation omitted].) This proposition is especially true when the forum selection clause contains an express waiver of the privilege to have the claims heard elsewhere. (*Boss*, 6 NY3d at 247.) Here, the Agreement contains a waiver, which provides that that "[t]he parties … irrevocably waive any objection they may now or hereafter have to the laying of venue of any such action in the New York court(s)." (NYSCEF Doc. No. 8 at 7.) The RCA also contains such a waiver because it provides that "[t]he parties hereby irrevocably waive any objection they may now or hereafter have to the laying of venue of any such action" in the New York courts delineated in the provision. (NYSCEF Doc. No. 9, RCA at 6.) Ultimately, the contractual language of both the Agreement and RCA provide unambiguously that any disputes are to be decided in the courts of New York, and therefore, this forum is proper.

Similarity, the New York choice of law provisions in the Agreement and RCA are enforceable. "[C]ourts will generally enforce choice-of-law clauses and … contracts should be interpreted so as to effectuate the parties' intent." (*Ministers & Missionaries Benefit Bd. v Snow*, 26 NY3d 466, 470 [2015][citation omitted].) Both the Agreement and RCA state that they "shall be governed by, and construed in accordance with, the

laws of the State of New York ... without regard to principles of conflicts of law." (NYSCEF Doc. No. 8, Agreement at 7; NYSCEF Doc. No. 9, RCA at 6.) Therefore, applying New York law to this action is proper.

The Restrictive Covenants

New York law provides that "[a] restrictive covenant will only be subject to specific enforcement to the extent that it is reasonable in time and area, necessary to protect the employer's legitimate interests, not harmful to the general public and not unreasonably burdensome to the employee." (*BDO Seidman v Hirschberg*, 93 NY2d 382, 389 [1999][citation omitted].) This standard applies when scrutinizing anti-solicitation and anti-competitive covenants. (*Good Energy, L.P. v Kosachuk*, 49 AD3d 331, 332 [1st Dept 2008].) Under this standard, legitimate employer interests include 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." (*BDO Seidman,* 93 NY2d at 389[citation omitted].) Another legitimate interest is "preventing former employees from exploiting or appropriating the goodwill of a client or a customer, which had been created and maintained at the employer's expense, to the employer's competitive detriment." (*Id.* at 392 [citations omitted].)

Here, the restrictive covenants in the Agreement are subject to specific enforcement. Feldman's promise not to solicit or accept business from or for clients or prospects of GC for one year after termination of his employment is reasonable in time. The First Department has found similar restrictions of greater duration to be reasonable. (*Chernoff Diamond & Co. v Fitzmaurice, Inc.*, 234 AD2d 200, 202 [1st Dept 1996] ["Moreover, neither the duration of the restriction, i.e., two years, nor its scope is unduly burdensome. The covenant does not prohibit defendant from pursuing his

profession."].) The restrictive covenants are also reasonable in area because they do not restrict Feldman's ability to earn his livelihood in any geographical area. (*Id.*) The restrictions are necessary to protect GC's legitimate interests in protecting GC's trade secrets and confidential customer lists, while preventing Feldman from exploiting or appropriating the goodwill of GC's clients which had been created and maintained at GC's expense. Indeed, the Agreement only limits Feldman's ability to solicit or accept business with respect to GC's clients, or any prospective client who Feldman solicited, participated in the solicitation of, or supervised the solicitation of in the year immediately preceding his termination from GC. In other words, these provisions are tailored "to prevent competitive use, for a time, of information or relationships which pertain peculiarly to the employer and which the employee acquired in the course of the employment." (*BDO Seidman*, 93 NY2d at 391.) Furthermore, nothing in the record indicates that these restrictive covenants are harmful to the general public or unreasonably burdensome to Feldman. To the extent the Agreement contains anti-solicitation provisions restricting Feldman's ability to encourage other GC employees to terminate their employment with GC, these provisions are also enforceable. (*see Aon Risk Servs. V Cusack*, 102 AD3d 461, [1st Dept 2013][restraining former employee from soliciting former employer's current employees pursuant to an agreement].) Likewise, the RCA is also specifically enforceable largely for the reasons previously stated.

With the exception of Feldman's breach of the notice provision, Plaintiffs have not shown a likelihood of success on their claims against Feldman. Initially, plaintiffs premised their request for a preliminary injunction on the affidavits of Andrew Bossom, a managing director of GC. (NYSCEF Doc. Nos. 5 and 39.) Bossom, who verified the complaint, swore that he "learned that Feldman, on behalf of ... [TR], had solicited the

business of certain clients of [p]laintiffs that [Feldman] serviced as a [GC] employee." (NYSCEF Doc. No. 5 at ¶¶ 3, 14.) Bossom also swore that "[a]n executive of Client 'A' stated to [him] that he anticipated Feldman, through [TR], would be placing his June 1st, renewal." (*NYSCEF Doc. N0. 39* at ¶ 4.) Bossom further swore that "[a]n executive of Client 'B' confirmed to [GC's] President that he had been solicited by Feldman." (*NYSCEF Doc. No. 39.* at ¶ 5.) However, in a related action in California, before the Hon. Martha K. Gooding, it seems that GC and MM attempted to seal deposition testimony of Bossom that contradicts his sworn affidavits. (NYSCEF Doc. Nos. 66, California hearing tr at 4-5:26-1.) When asked if an executive at Client A ever said that Feldman had solicited work from Client A on behalf of TR, Bossom responded, "No." (NYSCEF Doc. No. 67, Bossom California deposition tr at 56:4-7.) When asked, "Did anyone ever tell you that Mr. Feldman solicited work from [Client B] on behalf of [TR]," Bossom responded, "No." (*Id.* at 56:11-14.) When asked, "Do you have any information as to whether or not ... Feldman solicited [Client B] ... to give work to [TR]," Bossom responded, "I do not." (*Id.* at 56:15-18.) When asked, "[d]id anyone tell you that ... Feldman had solicited Client C to give work to [TR]," Bossom responded, "No." (*Id.* at 57-58: 23-1.) When asked, "[h]as anyone ever told you that Mr. Feldman asked for the business on behalf of [TR] from [Client D]," Bossom responded, "I don't talk to [Client D], so the answer's no." (*Id.* at 59: 4-7.) When asked, "Do you have any information that causes you to believe that ... Feldman recruited ... Freed to join [TR]," Bossom answered, "No." (*Id.* at 113:12-15.) When asked about a different GC employee, Christina Ramirez, and whether Bossom heard that Feldman solicited her, Bossom responded, "No." (*Id.* at 104:2-5.) Accordingly, the court takes notice of this deposition testimony especially in light of the extraordinary relief requested here, and because plaintiffs'

maneuvers in California suggest that they, in the words of Judge Gooding, "don't want the New York Court to see some of these facts." (NYSCEF Doc. No 66 at 4-5:26-1.) Because of the inconsistencies in Bossom's deposition testimony that effectively contradict his own affidavits, MM and GC have failed to satisfy their burden of showing a likelihood of success on all but one of their claims against Feldman.[2]

Irreparable Harm

MM and GC have also failed to establish irreparable harm to the extent they seek a preliminary injunction against Feldman. "Although irreparable injury cannot be presumed, it may be established where there is a danger that, unless enjoined, a misappropriator of trade secrets will disseminate those secrets to a wider audience or otherwise irreparably impair the value of those secrets." (*Invesco Inst. (N.A.), Inc. v Deutsche Inv. Mgt. Ams.*, Inc., 74 AD3d 696, 697 [1st Dept 2010][internal quotation marks and citations omitted].) In the California action, when asked "do you have any information that causes you to believe that ... Feldman is using [Metrics][,] that is information belonging to [GC] in his employment with [TR], Bossom answered, "No." (NYSCEF Doc. No. 67 at 119-120:24-6.) When asked if it was correct that Bossom had "no reason to believe that [Feldman] took with him information regarding policy renewal, policy terms and conditions, information regarding markets, resources where the reinsurance is placed, or amounts paid to [GC]," Bossom responded, "Correct." When asked "do you have any reason to believe that ... Feldman took any confidential

[2] The court acknowledges that MM and GC have sufficiently shown that Feldman breached the notice provision. However, plaintiffs ultimately fail to establish the other two prongs necessary for an injunction to issue. The court, therefore, declines to address the otherwise incredible relief seemingly requested to force Feldman to remain GC's employee.

information of [GC's] with him when he left," Bossom responded, "I don't know." (*Id.* at 40:2-6.) Accordingly, MM and GC have failed to establish a danger that, Feldman will disseminate trade secrets or otherwise irreparably impair their value.

Nevertheless, irreparable harm may be established when it appears that in the absence of a restrain on a defendant's solicitation of clients, plaintiffs would lose business that is impossible or difficult to quantify. (*Willis of N.Y. v DeFelice*, 299 AD2d 240, 242 [1st Dept 2002].) In light of Bossom's deposition testimony as previously noted, MM and GC have not established that Feldman solicited their clients, or that they would lose business that is impossible or difficult to quantify. Lastly, MM and GC have failed to establish that the defecting employees, Freer, Feldman and Ramirez, were irreplaceable and therefore, MM and GC have not established irreparable harm on those grounds either. (*GFI Securities, LLC v Tradition Asiel Securities, Inc.*, 61 AD3d 586 [1st Dept 2009].) Accordingly, GC and MM have failed to satisfy their burden of showing irreparable harm as to Feldman.

Balance of Equities

Because GC and MM have failed to establish irreparable harm, the harm to the plaintiffs from denial of the injunction as against the harm to Feldman from granting it does not tip in plaintiffs' favor. (*Edgeworth Food Corp. v Stephenson*, 53 AD2d at 588.) Accordingly, MM and GC's request for a preliminary injunction against Feldman and TR is denied.

Motion Sequence Number 002

In motion sequence number 002, MM and GC move to enjoin Freer from (1) breaching the notice of termination obligation in the Agreement, (2) soliciting or accepting reinsurance business from GC's clients or prospective clients, (3)

encouraging GC's employees to terminate their employment, (4) using or disclosing GC's confidential information or trade secrets, (5) breaching his obligations under the RCA, (6) using confidential information and trade secrets to solicit MM's clients or prospective clients for the purpose of selling or providing insurance, (7) using or disclosing MM's confidential information or trade secrets, (8), soliciting MM's employees for the purpose of encouraging their resignation, (9) breaching his duty of loyalty, (10) misappropriating GC and MM's confidential information, and (11) engaging in unfair competition. This request for a preliminary injunction against Freer is also based largely on the initial affidavits of Bossom, where Bossom stated, for instance, that he believed that Freer solicited another employee, Ramirez, to leave GC. (NYSCEF Doc. No. 18, Bossom aff at ¶ 12.)

Because the deposition testimony of Bossom, from the California action, also undermines much of these affidavits as they pertain to Freer, MM and GC fail to establish a likelihood of success or irreparable harm as to their claims that Freer solicited plaintiffs' clients or employees.[3] For instance, when asked, "Have you ever learned from any source that ... Freer solicited Christina Ramirez to leave [GC]," Bossom responded, "No." (NYSCEF Doc. No. 67, Bossom California deposition tr at 10:6-9.) When asked, "Did you ever inquire from [Ramirez] why she left," Bossom responded, "No." (*Id.* at 104:6-9.) When asked, "[H]as anyone told you that [F]reer has solicited [Client A] ... on behalf of [TR]," Bossom responded, "No." (*Id.* at 58:2-5.) When asked, "Has anyone told you that [Freer] has solicited anyone at Client B to get work on behalf

[3] The court acknowledges that MM and GC have sufficiently shown that Freer breached the notice provision. However, plaintiffs ultimately fail to establish the other two prongs necessary for an injunction to issue.

of [TR]," Bossom answered, "No." (*Id.* at 58:6-9.) When asked, "Has anyone told you that [Freer] solicited anyone from Client C to get work on behalf of [TR]," Bossom responded, "No." (*Id.* at 58:10-12.) Ultimately, the plaintiffs have not established that Feldman solicited their clients, or that they would lose business that is impossible or difficult to quantify. (*Willis of N.Y.*, 299 AD2d at 242.) Plaintiffs also fail to establish that the employee that Freer allegedly encouraged to defect, Ramirez, was irreplaceable especially in light of Bossom's apparent failure to inquire why she was leaving. Therefore, MM and GC have not established irreparable harm on this ground. (*GFI Securities, LLC v Tradition Asiel Securities, Inc.*, 61 AD3d 586 [1st Dept 2009].)

Lastly, plaintiffs have failed to establish a likelihood of success or irreparable harm as to their claims concerning confidential information and trade secrets. When asked, "Do you have any information from any source that ... Freer has used any [GC] confidential information, Bossom responded "No." (*Id.* at 53:3-6.) When asked, "Have you ever seen anything ... that Freer used [GC] confidential information since leaving," Bossom responded, "No." (*Id.* at 53:11-15.) When asked, "Have you ever seen anything, a document or report, that told you that ... [Freer] used [GC] confidential information since leaving," Bossom responded, "No." (*Id.* at 53:11-15.) When asked, "Can you identify a single piece of information or property that [Freer] took from [GC] when he left," Bossom responded, "[T]he answer is, I don't know." (*Id.* at 53:16-22.) Accordingly, MM and GC have failed to satisfy their burden of showing likelihood of success or irreparable harm. This court declines to consider a balance of the equities. The preliminary injunction against Freer is denied.

It is hereby,

ORDERED that the motion of defendant Tigerrisk Partners, LLC to dismiss the complaint herein is granted and the complaint is dismissed in its entirety as against said defendant, with costs and disbursements to said defendant as taxed by the County Clerk, and the Clerk is directed to enter judgment accordingly in favor of said defendant; and it is further

ORDERED that the motion of plaintiffs Marsh & Mclennan Companies, Inc., and Guy Carpenter & Company, LLC, for a preliminary injunction against defendant Kevin Feldman and Tigerrisk Partners, LLC is denied; and it is further

ORDERED that the motion of plaintiffs Marsh & Mclennan Companies, Inc., and Guy Carpenter & Company, LLC, for a preliminary injunction against defendant Elliot Freer and Tigerrisk Partners is denied; and it is further

ORDERED that the action is severed and continued against the remaining defendants; and it is further

ORDERED that the caption be amended to reflect the dismissal and that all future papers filed with the court bear the amended caption; and it is further

ORDERED that counsel for the moving party shall serve a copy of this order with notice of entry upon the County Clerk (60 Centre Street, Room 119), who is directed to mark the court's records to reflect the change in the caption herein; and it is further

ORDERED that such service upon the County Clerk and the Clerk of the General Clerk's Office shall be made in accordance with the procedures set forth in the Protocol on Courthouse and County Clerk Procedures for Electronically Filed Cases (accessible at the "E-Filing" page on the court's website at the address www.nycourts.gov/supctmanh)]; and it is further

ORDERED that counsel are directed to appear for a preliminary conference in Room 242, 60 Centre Street, New York, New York, on October 31, 2019 at 11:30 AM.

Motion Seq. No. 001

9/26/19
DATE

ANDREA MASLEY, J.S.C.
HON. ANDREA MASLEY

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

Motion Seq. No. 002

9/26/19
DATE

ANDREA MASLEY, J.S.C.
HON. ANDREA MASLEY

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

Motion Seq. No. 003

9/26/19
DATE

ANDREA MASLEY, J.S.C.
HON. ANDREA MASLEY

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