

Schonfeld Strategic Advisors LLC v Sassun
2020 NY Slip Op 30313(U)
January 6, 2020
Supreme Court, New York County
Docket Number: 654856/2018
Judge: Andrea Masley
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SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK: COMMERCIAL PART 48

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SCHONFELD STRATEGIC ADVISORS LLC,

Plaintiff,

- v -

ALESSANDRA SASSUN, EXODUSPOINT CAPITAL
MANAGEMENT, LP

Defendants.

INDEX NO. 654856/2018

MOTION DATE _____

MOTION SEQ. NO. 002

**DECISION + ORDER ON
MOTION**

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MASLEY, J.:

The following e-filed documents, listed by NYSCEF document number (Motion 002) 95, 96, 97, 98, 99, 100, 105, 106, 107, 108, 109, 110, 111, 113, 115
were read on this motion to/for DISMISS

Defendants move, pursuant to CPLR 3013, 3016 (b), and 3211 (a) (7), to dismiss plaintiff's amended complaint, in which plaintiff alleges the following causes of action: (1) breach of contract against individual defendant Alessandra Sassun; (2) breach of fiduciary duty of loyalty against Sassun; (3) tortious interference with contract against defendant ExodusPoint Capital Management, LP (ECM); (4) unfair competition against both defendants; and (5) misappropriation of confidential/proprietary information against both defendants (NYSCEF 97 [4/11/19 verified amended complaint]).

Plaintiff alleges in its amended complaint (complaint) that Sassun, plaintiff's "Head of Human Capital" until April 2018, committed various acts and omissions in contravention of her employment contract and fiduciary duties to plaintiff in connection with her new employer, ECM, at which Sassun was employed in the same capacity (Head of Human Capital) after leaving plaintiff's employ (*id.* ¶¶ 1-6). Plaintiff states that

Sassun, “[b]y virtue of serving as [plaintiff’s] Head of Human Capital, . . . possesses Confidential Information regarding [plaintiff’s] operations, including, but not limited to, information regarding the identity of its key employees and portfolio managers, its compensation models, its relationship structures, its platforms, its vendors, and its market data sources” (*id.* ¶ 44). Additionally, Sassun interacted with/supervised outside recruiting firms and “learned the terms of [plaintiff’s] specific agreements with” those firms (*id.* ¶ 45).

As to Sassun’s pre-departure conduct, plaintiff asserts she learned of, and “provid[ed] assistance” to, plaintiff’s former-employee, nonparty Gregoire Vidal, “in connection with his efforts to obtain employment with [ECM]” and that Sassun “conceal[ed] from [plaintiff] that Vidal” executed an employment agreement with ECM (*id.* ¶ 8). Specifically, plaintiff alleges that Sassun first learned Vidal was to interview with ECM and “contacted a friend to ask whether [the friend] knew” the person at ECM “who would be interviewing Vidal the following day”; second, “after learning from Vidal that he had received an employment offer from [ECM], Sass[u]n failed to alert her superiors at [plaintiff] that Vidal was pursuing employment with a direct competitor” and she “reviewed a draft of Vidal’s employment agreement with [ECM] and contacted an attorney on Vidal’s behalf to review, and provide Vidal with advice concerning, that agreement (*id.* ¶¶ 38-41). Accordingly, plaintiff asserts that Sassun breached her own employment contract and fiduciary duties by “assisting and encouraging Vidal in his efforts to obtain, and to negotiate the terms of, employment with [ECM] and by failing to alert her superiors” (*id.* ¶ 41).

Following Sassun's departure from plaintiff's employ to ECM in April 2018, plaintiff learned that ECM had solicited two additional employees of plaintiff: Erica Derector and David Chen (*id.* ¶ 54). Plaintiff alleges that Sassun "told Derector . . . to contact Enrico Corsalini," COO of ECM, "for information about employment at [ECM]" and "advised Corsalini that Derector may contact him" (*id.* ¶ 55). In August 2018, when ECM "was considering Derector for potential employment," ECM's "Global Head of Business Development" "asked Sassun for her opinion about Derector" and Sassun "responded that Derector was 'great' " (*id.* ¶ 56).

As to Chen, when ECM was considering employing him in June 2018, ECM's "Chief Technology Officer" "asked Sassun . . . for her opinion of Chen" and Sassun "responded that Chen was a 'good guy' or was 'good at his job' " (*id.* ¶ 57). Thus, plaintiff argues that Sassun breached her contractual and fiduciary obligations to plaintiff in "assisting" and/or "encouraging" plaintiff's employees to terminate their employment with plaintiff after her departure and ECM and ECM "repeatedly interfered with [plaintiff's] contractual obligations by soliciting Sassun's opinion," given her prior access to plaintiff's "Confidential Information concerning the qualifications and performance of [plaintiff's] employees," "about [plaintiff's] current . . . employees under consideration for recruitment and/or employment by [ECM]" (*id.* ¶¶ 58-59).

Plaintiff does not allege that Derector or Chen left plaintiff's employ to work for ECM at all, let alone as a result of any conduct on the part of Sassun. Further, while another of plaintiff's former employees, Valmiki Prasad, went to work for ECM in April 2018, there are no allegations in the amended complaint relating to any involvement of Sassun in the solicitation, recruiting, or hiring of Prasad. In fact, there are no allegations

relating to Prasad's departure from plaintiff apart from the fact that he left plaintiff's employ and was hired by ECM in April 2018.

Discussion

"On a motion to dismiss pursuant to CPLR 3211, the pleading is to be afforded a liberal construction. [The court] accept[s] the facts as alleged in the complaint as true, [and] accord[s] plaintiff[] the benefit of every possible favorable inference" (*Leon v Martinez*, 84 NY2d 83, 87-88 [1994] [citation omitted]). However, bare legal conclusions and "factual claims which are either inherently incredible or flatly contradicted by documentary evidence" are not "accorded their most favorable intendment" (*Summit Solomon & Feldesman v Lacher*, 212 AD2d 487, 487 [1st Dept 1995]).

1. Breach of contract against Sassun

Plaintiff alleges that Sassun breached her employment contract (Agreement), attached as exhibit A to the amended complaint, in "assisting" or "encouraging" other employees to depart plaintiff's employ in violation of the Agreement's confidentiality and non-solicit provisions. Specifically, § 3 (a) of the Agreement provides:

"The Employee understands that employment by or association with the Company creates a confidential relationship of confidence and trust with respect to any information of a confidential or secret nature that may be disclosed to or otherwise learned by the Employee during his or her employment and that relates to the business of the Company or to the business of any parent, affiliate, customer, service provider (including clearing firm), supplier or other vendor of the Company, or any other party with whom the Company agrees to hold information of such party in confidence ('Confidential Information'). Confidential Information includes, but is not limited to, . . . trade secrets; . . . business strategies; financial information; . . . personnel information; investment adviser, portfolio manager, trader, trainee and member information; customer information; knowledge of the Company's operations; . . . plans or projections; . . .

portfolio manager lists; member lists; trader lists; trainee lists; customer lists; advertiser lists; supplier lists; . . . oral and written business, financial, technical, and investment adviser, portfolio manager and trader arrangement information; due diligence information, procedures and process; proprietary analytics, including those used in the Company's due diligence processes; . . . and any other non-public information concerning the Company's businesses"

(NYSCEF 97).

Section 3 (a) further provides:

"At all times, both during the Employee's employment or association with the Company and after termination of such employment or association, the Employee agrees to keep and hold all such Confidential Information in strict confidence and trust, and will not use or disclose any Confidential Information without the prior written consent of the Company, except as may be necessary to perform the Employee's duties as an employee of the Company. . . . Upon termination of employment or association with the Company (or at any time when requested by the Company), the Employee will promptly deliver to the Company all documents and materials of any nature pertaining to the Employee's work with the Company and will provide written certification of compliance with this Agreement. Under no circumstances following termination will the Employee retain any property of the Company, or any documents or materials or copies thereof containing any Confidential Information"

(*id.*).

Under § 3 (b) – (f) of the Agreement, Sassun further agreed that: (1) plaintiff's "Confidential Information" "is among the [plaintiff's] most important business assets"; (2) "the trade secret status of the Confidential Information, and that the Confidential Information constitutes a legitimate protectable interest of the [plaintiff]"; (3) she would "not, directly or indirectly: (i) disclose to or use for the benefit of any individual or entity (other than the [plaintiff]) Confidential Information; or (ii) disparage the [plaintiff] in any way"; (4) her obligations "shall survive the expiration or termination of this Agreement or any other cessation of the Employee's employment or association with the [plaintiff]; and

(5) she owes plaintiff "fiduciary duties of loyalty and care to the maximum extent permitted by law" (*id.*).

Section 6 (a) – (c) of the Agreement, regarding "Restrictive Covenants," provides:

"a) For so long as the Employee is employed by or associated with the Company and for a period of five (5) years thereafter, the Employee shall not, directly or indirectly: (i) solicit, divert, recruit or encourage (collectively, "Solicit") any of the members, employees, traders, trainees, agents, customers, portfolio managers, strategists or investment advisers (collectively, "Restricted Persons") of any of the Company or the Company's affiliates, or any of the successors or assigns of the Company or the Company's affiliates (collectively, the "Firms") to terminate their respective relationships with any of the Firms, or terminate or alter their relationships in a way that is adverse or detrimental to any of the Firms' interests; (ii) Solicit business away from any of the Firms, or assist any individual or entity in doing so or attempting to do so; (iii) cause or seek to cause any individual or entity to refrain from dealing or doing business with any of the Firms or assist any individual or entity in doing so or attempting to do so; (iv) trade securities or other products, or otherwise manage assets or capital, for, on behalf of, or at the direction of any former employee or member of any of the Firms; or (v) manage the assets of or provide investment advice to any entity or individual other than the Company utilizing any Confidential Information or automated or program trading strategies.

b) For purposes of clarification, the term 'Solicit' is to be broadly defined and interpreted, and not be limited to an initial communication or contact.

c) The provisions of this Section 6 shall survive the expiration or termination of this Agreement or any other cessation of the Employee's employment or association with the Company"

(*id.*).

Defendants argue that the complaint fails to state a cause of action for breach of contract as: (1) the non-solicitation provision (NSA) is overbroad and unenforceable as the five-year term is unreasonable, the provision serves no legitimate, protectable interest of plaintiff, and demonstrates plaintiff's bad faith as a matter of law as it is fraught with overreaching; (2) plaintiff have failed to allege a breach of the NSA as there

are no factual allegations that Sassun took any action to “solicit, divert, recruit or encourage” any of plaintiff’s employees “to terminate their [] relationships” with plaintiff”; (3) there is no breach of the confidentiality provision (CA) as the only information Sassun provided ECM with were her opinions that Derector is “great” and that Chen is a “good guy” or is “good at his job,” nether of which constitute trade secrets or other confidential information; and (4) the complaint fails to allege damages with with any specificity or in a nonconclusory fashion.

As to Vidal, plaintiff’s complaint survives this motion as there are issues of fact as to whether Sassun solicited, diverted, recruited, or encouraged” him to defect from plaintiff’s employ to that of ECM. Additionally, whether the NSA is unenforceable is an issue of fact on this record, which is bereft of information relating to common NSA’s in this industry or relating to “Head of Human Capital” positions, and this is a motion to dismiss, not a summary judgment motion.

As to Derector, although plaintiff asserts that Sassun informed her who to contact at ECM for information about working there, plaintiff wholly fails to allege any injury relating from Sassun’s actions to adequately state a claim. Further, as to Prasad, there is nothing plaintiff alleges in the complaint to support that Sassun had any involvement in his recruitment by ECM.

As with Derector, plaintiff alleges nothing in its complaint to connect Sassun’s opining that Chen is a “good guy” or “good at his job” with a resulting damage. Plaintiff states, in an attempt to fix that omission with the affidavit of Andrew Fishman, plaintiff’s president, that it was “forced to negotiated a new compensation package” with Chen to induce him to stay with plaintiff after his solicitation from ECM (NYSCEF 107). While

plaintiff's allegations are thin, they are just adequate, at this stage, to survive the motion with regard to Chen.

Accordingly, the breach of contract claim will go forward against Sassun with regard to only Vidal and Chen. The remainder of plaintiff's breach of contract claim is dismissed.

2. Breach of fiduciary duty against Sassun

Even assuming that Sassun had a fiduciary duty to plaintiff, plaintiff does not plead the elements of Sassun's purported breach of fiduciary duty with the requisite particularity, particularly with regard to what damages plaintiff incurred as a result of alleged breaches. Further, as above, plaintiff has failed to allege that Sassun breached any compensable obligation to plaintiff with regard to Derector or Prasad, and plaintiff's breach of fiduciary duty claims relating to Vidal and Chen are duplicative of its breach of contract claims. Accordingly, the breach of fiduciary duty cause of action is dismissed in its entirety.

3. Tortious interference with the Agreement against ECM

Plaintiff's tortious interference claim alleges that ECM intentionally interfered with Sassun's Agreement by inducing Sassun to violated the Agreement and provide ECM with "Confidential Information" regarding plaintiff's employees. As the breach of contract claim is dismissed as it relates to Derector and Prasad, and plaintiff's allegations pertaining to Vidal predate Sassun's departure from plaintiff's employ, this claim is applicable as to only the allegations surrounding Chen.

Plaintiff's claim is dismissed as the only information it allegedly procured from Sassun regarding Chen is that he is a "good guy" or is "good at his job," and that, as a

result of ECM's solicitation of Chen, plaintiff was "forced" to renegotiate Chen's compensation package to keep him from leaving plaintiff's employ. Plaintiff does not allege in its complaint or Fishman's affidavit that ECM actually made an offer to Chen or that plaintiff was "forced" to match an offer made by ECM. The allegations tying ECM's solicitation of Chen and Chen's renegotiated compensation package are speculative and insufficient to allege that intentional conduct on the part of ECM was the proximate cause of plaintiff's purported injury in raising Chen's compensation level.

Further, plaintiff states in only conclusory allegations that Sussman breached her Agreement in opining that Chen is either a "good guy" or was "good at his job," neither of which constitute divulging trade secrets as alleged in the vague, offhand manner as characterized in plaintiff's submissions. Accordingly, plaintiff has not adequately stated a claim for tortious interference with the Agreement against ECM with regard to Chen or any of the other current and former employees and the claim is dismissed.

4. Unfair competition against Sassun and ECM

Plaintiff asserts only conclusorily that "Sassun and ExodusPoint have acted in bad faith, and abused the confidential contractual and employer relationship between [plaintiff] and Sassun, by wrongfully misappropriating [plaintiff's] commercial advantage, including, among other misconduct, misappropriating and using for their own benefit [plaintiff's] Confidential Information to compete against [plaintiff]" (NYSCEF 97, ¶ 84). This is plainly vague and inadequate to state a claim for unfair competition as plaintiff has failed to state with particularity the manner in which either Sassun or ECM acted in bad faith or expressly state what, if any, actual competitive advantage belonging exclusively to plaintiff was misappropriated by Sassun and ECM beyond Sassun's

allegedly general opinion of Chen or how ECM or Sassun misused that information to gain a competitive advantage, especially in light of the fact that neither Derector or Chen were hired by ECM, there are no allegations that Sassun imparted any confidential information to ECM regarding Vidal, and plaintiff makes no allegations pertaining to Sassun's involvement in ECM's recruiting of Prasad. Plaintiff's unfair competition claim is, therefore, dismissed in its entirety.

5. Misappropriation against Sassun and ECM

Plaintiff's misappropriation claim is premised on the following: Sassun disclosed plaintiff's "Confidential Information" to ECM; Sassun and ECM "wrongfully misappropriated" plaintiff's "Confidential Information" to advance their own interests and harm plaintiff; and that misappropriation has caused plaintiff "irreparable harm" and unspecified monetary harm (NYSCEF 97, ¶¶ 87-92). Those allegations are conclusory and insufficient to survive this motion.

"To establish a claim for misappropriation of trade secrets [or confidential information], plaintiff must show (1) that it possesses a trade secret, and (2) that defendant is using that trade secret in breach of an agreement, confidence, or duty, or as a result of discovery by improper means" (*Braesmont Inv. Group, LLC v Quad Capital, LLC*, 2018 WL 4110892, *10 [Sup Ct, New York County 2018] [citations omitted]). "Although detailed descriptions of the misappropriated information are not required . . . conclusory boilerplate allegations . . . are insufficient to state a claim for misappropriation (*id.* at *10-11 [internal quotation marks and citations omitted]).

Given plaintiff's failure to plead factual allegations specifying the specific trade secrets or confidential information allegedly misappropriated, the claim is fatally defective as alleged and, therefore, it is dismissed in its entirety.

Accordingly, it is

ORDERED that defendants' motion to dismiss the amended complaint is granted in part; and it is further

ORDERED that the breach of contract claim against Sassun will continue to the extent that it relates to Sassun's alleged acts or omissions pertaining to nonparties Vidal and Chen and is otherwise dismissed as against Sassun; and it is further

ORDERED that the amended complaint is dismissed in its entirety against defendant ExodusPoint Capital Management, LP, with costs and disbursements to said defendant as taxed by the Clerk of the Court, and the Clerk is directed to enter judgment accordingly in favor of said defendant; and it is further

ORDERED that the amended complaint is severed and continued against the remaining defendant, Sassun; 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 (Room 141B) and the Clerk of the General Clerks Office (Room 119), who are directed to mark the court's records to reflect the change in the caption herein; and it is further

ORDERED that all service 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 – www.nycourts.gov/supctmanh); and it is further

ORDERED that defendant Sussan shall serve an answer to the amended complaint within 20 days of the court's entry of this decision and order on NYSCEF; and it is further

ORDERED that the parties shall appear for preliminary conference in Part 48 on February 3, 2020 at 3:30 PM.

1/6/2020
DATE


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

CHECK ONE:

<input type="checkbox"/>	CASE DISPOSED	<input type="checkbox"/>	DENIED	<input checked="" type="checkbox"/>	NON-FINAL DISPOSITION	<input type="checkbox"/>	OTHER
<input type="checkbox"/>	GRANTED	<input type="checkbox"/>		<input checked="" type="checkbox"/>	GRANTED IN PART	<input type="checkbox"/>	
<input type="checkbox"/>	SETTLE ORDER	<input type="checkbox"/>		<input type="checkbox"/>	SUBMIT ORDER	<input type="checkbox"/>	
<input type="checkbox"/>	INCLUDES TRANSFER/REASSIGN	<input type="checkbox"/>		<input type="checkbox"/>	FIDUCIARY APPOINTMENT	<input type="checkbox"/>	REFERENCE

APPLICATION:

CHECK IF APPROPRIATE: