Weil v Stenzler
2020 NY Slip Op 30742(U)
March 6, 2020
Supreme Court, New York County
Docket Number: 652661/2018
Judge: Andrea Masley

SUPREME COURT OF THE STATE OF NEW YORK NEW YORK COUNTY

PRESENT: HON. ANDREA MASLEY PART IAS MOTION 48EFM
Justice

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JUSTIN WEIL, ELAN DANON

Plaintiff,

- v -

ANDREW STENZLER, RUMBLE FITNESS LLC,

Defendant.

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INDEX NO. 652661/2018

MOTION DATE

MOTION SEQ. NO. 003

DECISION + ORDER ON MOTION

MASLEY, J.:

The following e-filed documents, listed by NYSCEF document number (Motion 003) 31, 32, 33, 34, 35, 36, 37, 38, 39, 40, 41, 42, 43, 44, 45, 46, 47, 48, 49, 50, 51, 52, 53, 54, 55, 56, 57 were read on this motion to/for AMEND CAPTION/PLEADINGS.

In motion sequence number 003, plaintiffs Justin Weil and Elan Danon (collectively, Plaintiffs), move pursuant to CPLR 3025 for leave to file a second amended complaint. (NYSCEF Doc. No. [NYSCEF] 31, Notice of Motion 003). Defendants Andrew Stenzler and Rumble Fitness LLC (Rumble) (collectively, Defendants) cross-move pursuant to CPLR 2215 and 22 NYCRR Section 130-1.1 (a) for sanctions against Plaintiffs in the form of costs and expenses. (NYSCEF 42, Notice of Cross Motion at 1.)

Background

Plaintiffs developed a business idea for an exercise class studio, and subsequently created specific business plans that they wished to develop. (*Id.*, ¶¶ 21, 22, 25, 26.) Because Weil knew Stenzler was a successful businessman, Weil shared Plaintiffs' idea for a unique exercise studio, containing a specially constructed punching bag. (*Id.*, ¶¶ 38, 39, 40, 42).

Stenzler became involved in the business development of Plaintiffs' proposed business, "Spar." (*Id.*, ¶ 40-43). Specifically, the amended complaint alleges that,

> "[a]fter the initial meeting, and under the guise that Stenzler would be very closely involved in Spar, Weil and Danon started sharing with Stenzler much more information regarding Spar and its proprietary information and concepts, including, without limitation, the idea of the teardrop shaped punching bag."

(*Id.*, ¶ 42). Nevertheless, "[Plaintiffs] were careful in how they disclosed the specifics of their trade secrets, including taking steps to guard these secrets through confidentiality agreements before any disclosure." (*Id.*, ¶ 81.). Plaintiffs assert that after sharing this proprietary information with Stenzler, Stenzler announced "that he and three other partners [would] be opening a new group exercise business that Fall called 'Rumble.'" (*Id.*, ¶ 56). Rumble incorporated "almost every material detail regarding business and operations that Weil and Danon shared with Stenzler during discussions and meetings during the prior four months", including the concept for the teardrop shaped punching bag (*Id.*, ¶¶ 57, 58).

In 2018, Plaintiffs initiated this action against Defendants alleging: (1) unfair competition and misappropriation of confidential information and trade secrets, (2) breach of fiduciary duty, (3) "idea misappropriation", and (4) unjust enrichment. (NYSCEF 1, Complaint ¶¶ 63-104). On April 5, 2019, this court dismissed (1) the second cause of action against Stenzler (breach of fiduciary duty), (2) the third cause of action against Stenzler and Rumble ("idea misappropriation"), and (3) the fourth cause of action against Rumble (unjust enrichment). (NYSCEF 14, Decision and Order on Motion Sequence Number 001). This court granted Plaintiffs leave to replead the second and third causes of action against Stenzler. (*id.*). Plaintiffs filed an Amended Complaint on April 21, 2019. (NYSCEF 15, Amended

Complaint). On June 21, 2019, this court dismissed Plaintiffs' second and third causes of action (breach of fiduciary duty and "idea misappropriation", respectively) as repleaded in the Amended Complaint. (NYSCEF 27, Decision and Order on Motion Sequence Number 002). Following this decision, Plaintiffs allegedly became aware of other facts that they believe support a cause of action for fraud. (*See* NYSCEF 37, *Ripka v. Stenzler, et al.*, Index No. 154593/2019 [Sup Ct, NY County June 18, 2019]; NYSCEF 38, *Barry's Bootcamp NYC, LLC v. Wright, et al.*, Index No. 650215/2019 [Sup Ct, NY County Jan. 11, 2019]). Plaintiffs now move to amend the complaint a second time, seeking to add a fraud claim against Defendants. (NYSCEF 35, Proposed Second Amended Complaint ¶¶ 86-96).

Discussion

CPLR 3025 provides that "[a] request for leave to amend a complaint should be freely given, and denied only if there is prejudice or surprise resulting directly from the delay, or if the proposed amendment is palpably improper or insufficient as a matter of law." (*CIFG Assur. N. Am., Inc. v J.P. Morgan Sec. LLC*, 146 AD3d 60, 64-65 [1st Dept 2016] [internal quotation marks omitted and citation omitted]). The plaintiff must "allege facts legally sufficient to support its proposed pleading, and where the facts relied upon are 'obviously not reliable or are insufficient', the absence of merit is 'free from doubt.'" (*Non-Linear Trading Co., Inc. v Braddis Associates, Inc.*, 243 AD2d 107, 117 [1st Dept 1998] [citation omitted].)

"To state a cause of action for fraud, a plaintiff must allege a representation of material fact, the falsity of the representation, knowledge by the party making the representation that it was false when made, justifiable reliance by the plaintiff and resulting injury." (*Kaufman v Cohen*, 307 AD2d 113, 119 [1st Dept 2003][citations omitted].)

Here, Plaintiffs' proposed cause of action for fraud fails to sufficiently allege justifiable reliance. Indeed, the Proposed Second Amended Complaint is bereft of any allegation that Plaintiffs justifiably relied on Stenzler's representations. Although Plaintiffs allege that "Weil had a personal relationship with Stenzler ... and visited the Stenzlers' residence on various occasions", such allegations, without more, fail to state justifiable reliance. Accordingly, the facts alleged are insufficient, and the proposed amendment is palpably insufficient. (*See* NYSCEF 34, Proposed Second Amended Complaint.)

Plaintiffs' fraud claim is also an improper recasting of a breach of contract claim. "[A] cause of action for fraud will not arise when the only fraud charged relates to a breach of contract." (*Trusthouse Forte (Garden City) Mgt. v Garden City Hotel*, 106 AD2d 271, 272 [1st Dept 1984][citations omitted].) In the Proposed Second Amended Complaint, Plaintiffs' alleged damages are the loss of confidential information and trade secrets that were taken by Stenzler, but Plaintiffs allege that they took steps to guard their secrets through confidentiality agreements before any disclosure with Stenzler. (NYSCEF 34, Proposed Second Amended Complaint ¶¶ 81, 96.) Accordingly, these damages, as alleged, actually stem from a breach of the confidentiality agreements, and not the tort of fraud. (*MBIA Ins. Corp. v Credit Suisse Sec. (USA) LLC*, 165 AD3d 108, 114 [1st Dept 2018]["It has long been the rule that parties may not assert fraud claims seeking damages that are duplicative of those recoverable on a cause of action for breach of contract."].) To the extent that Plaintiffs also allege that "Stenzler took the Plaintiffs' first-mover advantage by delaying the launch of Spar" (NYSCEF 34, Proposed Second Amended Complaint at ¶ 96), such damage is "impermissibly speculative." (*Norcast S.ar.l. v Castle Harlan, Inc.*, 147 AD3d 666, 667 [1st Dept 2017].) Although this allegation of damages is framed as a loss to Plaintiffs, it is an improper attempt to recover

profits that may have been realized in the alleged absence of fraud. (*Id.*) Accordingly, the motion for leave to amend the complaint is denied.

The cross motion for sanctions is also denied. 22 NYCRR Section 130-1.1 (a) empowers courts with discretionary authority to sanction attorneys or parties, in the form of costs and fees, for frivolous conduct. Conduct is frivolous if, "it is completely without merit in law and cannot be supported by a reasonable argument for an extension, modification, or reversal of existing law." (22 NYCRR Section 130-1.1[c][1].) "In determining whether the conduct undertaken was frivolous, the court shall consider, among other issues the circumstances under which the conduct took place ... and whether or not the conduct was continued when its lack of legal or factual basis ... should have been apparent ... ." (22 NYCRR Section 130-1.1[c].) Here, the court declines to sanction Plaintiffs because "sanctions ought not to be imposed in such a manner as to restrict ultimately unpersuasive, yet good-faith, arguments requiring ... review of existing law." (*Levy v. Carol Mgmt. Corp.*, 260 AD2d 27, 34 [1st Dept 1999].)

Accordingly, it is

ORDERED that Plaintiffs' motion for leave to file a second amended complaint is denied; and it is further

ORDERED that Defendants' cross motion to impose sanctions is denied.

3/6/2020
DATE

ANDREA MASLEY, J.S.C.

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