

Zhang v Trusted Insight, Inc.
2022 NY Slip Op 31703(U)
May 25, 2022
Supreme Court, New York County
Docket Number: Index No. 154570/2020
Judge: David B. Cohen
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**SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY**

PRESENT: HON. DAVID B. COHEN **PART** **58**

Justice

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INDEX NO. 154570/2020

YADAN ZHANG,

Plaintiff,

MOTION SEQ. NO. 002

- v -

TRUSTED INSIGHT, INC., TI PLATFORM FUND I GP, LLC,
ALEX BANGASH, and TRANG NGUYEN,

**DECISION + ORDER ON
MOTION**

Defendants.

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The following e-filed documents, listed by NYSCEF document number (Motion 002) 31, 32, 33, 34, 35, 36, 37, 38, 39, 40, 41, 42

were read on this motion to/for

STRIKE PLEADINGS

In this employment discrimination action, plaintiff moves, pursuant to CPLR 3024, for an order striking allegations in defendants' Answer to the Second Amended Complaint with Counterclaim. Defendants oppose the motion. After consideration of the parties' contentions, as well as a review of the relevant statutes and case law, the motion is decided as follows.

FACTUAL AND PROCEDURAL BACKGROUND

In her complaint, plaintiff alleges that, during the time of her employment at defendant Trusted Insight, Inc. (TI), first working as a Junior News/ Media Analyst, and later as an Investor Relations Specialist, she was repeatedly sexually harassed by defendant Alex Bangash (Bangash), TI's Chief Executive Officer. She further alleges that, as her superior, Bangash used his position to pressure her to acquiesce to his advances, and also suggested that her continued employment and advancement at TI depended on her submission. Plaintiff alleges that, after she refused his advances and reported them to her supervisor at TI, TI retaliated against her, first by

taking away work assignments, and then by terminating her employment. Plaintiff further alleges that TI's retaliation against her continued even after she was terminated, insofar as defendant Trang Ngeuyen (Ngeuyen) sought to interfere with her application for a work visa by making false statements about plaintiff's dates of employment and job duties to plaintiff's immigration lawyer. Additionally, plaintiff claims that after her termination, her job title in TI's employment records were changed to the lesser position of administrative assistant to interfere with her job search and to jeopardize her efforts to obtain a work visa.

Plaintiff asserts six causes of action in the complaint: (1) sexual discrimination in violation of the New York State Human Rights Law (NYSHRL) against all defendants; (2) retaliation in violation of the NYSHRL against all defendants; (3) aiding and abetting discrimination and retaliation in violation of the NYSHRL against Bangash and Ngeuyen; (4) sexual discrimination in violation of the New York City Human Rights Law (NYCHRL) against all defendants; (5) retaliation in violation of the NYCHRL against all defendants; and (6) aiding and abetting discrimination and retaliation in violation of the NYCHRL against Bangash and Ngeuyen.

Defendants' answer includes a general denial of all allegations of wrongdoing and they assert that plaintiff's termination was proper. Defendants also assert ten counterclaims: fraud; conversion; unjust enrichment; breach of fiduciary duty/faithless servant doctrine; tortious interference with prospective economic advantage, violation of the Computer Fraud and Abuse Act (CFAA) under 18 United States Code, section 1030; violation of the Defend Trade Secrets Act (DTSA) under 18 United States Code, section 1836; defamation; and intentional infliction of emotional distress.

Plaintiff moved for leave to further amend her complaint and to dismiss defendants' counterclaims. By order dated June 30, 2021, this Court allowed plaintiff to amend her complaint and dismissed nine of the ten counterclaims. Only the fourth counterclaim, breach of fiduciary duty, was not dismissed in its entirety. This counterclaim was upheld to the extent that defendants' allegations regarding plaintiff's misappropriation and misuse of trade secrets and embezzlement of corporate funds were deemed a sufficient cause of action.

Plaintiff's proposed second amended complaint was accepted and defendants served an answer thereto asserting one counterclaim. Plaintiff now moves to strike the counterclaim on the ground that it is prejudicial and unnecessary.

Plaintiff argues that in its order, this Court clearly denied defendants' request to amend their answer with counterclaims after dismissing nine of the initial ten of the same. Plaintiff contends that the counterclaim for breach of fiduciary duty set forth in defendants' answer to the second amended complaint contains substantive changes, including new allegations made without leave of court, such as professional incompetence, fraud, and wrongdoing. Plaintiff also contends that defendants make inappropriate references to her personal life which are irrelevant to her employment experience. Thus, asserts plaintiff, the counterclaim violates CPLR 3024 and must be stricken or changed to an appropriate form by this Court.

In opposition, defendants argue that the motion must only be granted if the allegations in the counterclaim are shown to be highly irrelevant; that the counterclaim was revised in response to the amendments made in the new complaint; and that the additional allegations reflect these amendments and are related to the counterclaim for breach of fiduciary duty. Thus, defendants maintain that they the counterclaim is in a proper form.

In reply, plaintiff argues that defendants' counterclaim is derivative of their earlier dismissed counterclaims, contains irrelevant statements, and/or seeks to harass and defame her reputation.

LEGAL CONCLUSIONS

CPLR 3024 permits a party to move to strike scandalous or prejudicial matter from a pleading. In ruling on a motion pursuant to this statute, "the inquiry is whether the purportedly scandalous or prejudicial allegations are relevant to a cause of action" (*see Soumayah v Minnelli*, 41 AD3d 390, 392 [1st Dept 2007] [*citations omitted*]).

This Court agrees with plaintiff that the counterclaim exceeds the scope permitted by this Court in its prior order. Doc. 28. In that order, this Court, citing *Burry v Madison Park Owner, LLC*, 84 AD3d 699, 699-700 (1st Dept 2011), held that, in order to set forth a claim for breach of fiduciary duty, one must allege that a party owed the plaintiff a fiduciary duty, committed misconduct, and the claimant suffered damages as a result of the misconduct. Doc. 28 at 10. The duty is based on an employee's good faith and loyalty toward his or her employer. Activities such as failing to do work or engaging in questionable sexual conduct do not give rise to a claim for breach of fiduciary duty (*see Veritas Capital, Mgt., L.L.C. v Campbell*, 82 AD3d 529, 530 [1st Dept 2011]).

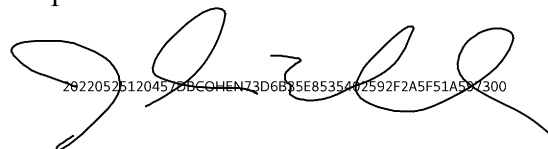
Defendants' amended counterclaim contains allegations of fraudulent conduct despite the fact that a counterclaim based in fraud was dismissed by this Court. Their other new allegations, based on plaintiff's sexual conduct and incompetence, also are not relevant with respect to breach of fiduciary duty and are stricken. The original counterclaim, alleging embezzlement and misuse of trade secrets, is preserved.

Accordingly, it is hereby:

ORDERED that plaintiff’s motion is granted to the extent that all allegations therein, other than allegations of embezzlement and misuse of trade secrets constituting breach of fiduciary duty are stricken; and it is further

ORDERED that defendants shall serve an amended answer curing the defects of the counterclaim within 10 days after service of this order with notice of entry; and it is further

ORDERED that the parties shall appear for a previously scheduled compliance conference via Microsoft Teams on July 26, 2022 at 12:00 p.m.



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5/25/2022

DATE

DAVID B. COHEN, J.S.C.

CHECK ONE:

CASE DISPOSED

NON-FINAL DISPOSITION

GRANTED

DENIED

GRANTED IN PART

OTHER

APPLICATION:

SETTLE ORDER

SUBMIT ORDER

CHECK IF APPROPRIATE:

INCLUDES TRANSFER/REASSIGN

FIDUCIARY APPOINTMENT

REFERENCE