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| BDO USA, LLP v Morris |
| 2022 NY Slip Op 33217(U) |
| September 23, 2022 |
| Supreme Court, New York County |
| Docket Number: Index No. 652352/2020 |
| Judge: Andrew S. Borrok |
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SUPREME COURT OF THE STATE OF NEW YORK
 COUNTY OF NEW YORK: COMMERCIAL DIVISION PART 53

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| BDO USA, LLP, | INDEX NO. | <u>652352/2020</u> |
| Plaintiff, | | 07/20/2022, |
| | | 07/27/2022, |
| - v - | | 07/28/2022, |
| | | 08/04/2022, |
| STEPHEN MORRIS, JAMES ANDREW STILES, | | 08/30/2022, |
| Defendant. | MOTION DATE | <u>09/08/2022</u> |
| | | 019 020 021 |
| | MOTION SEQ. NO. | <u>022 023 024</u> |

**DECISION + ORDER ON
 MOTION**

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HON. ANDREW S. BORROK:

The following e-filed documents, listed by NYSCEF document number (Motion 019) 316, 317, 318, 319, 320, 321, 322, 323, 324, 325, 326, 404, 405, 406, 407, 408
 were read on this motion to/for DISMISS.

The following e-filed documents, listed by NYSCEF document number (Motion 020) 327, 328, 329, 330, 331, 332, 333, 334, 335, 336, 337, 338, 339, 340, 341, 342, 343, 344, 345, 346, 347, 348, 349, 350, 351, 352, 353, 354, 355, 356, 357, 358, 359, 398, 418, 419, 420
 were read on this motion to/for DISCOVERY.

The following e-filed documents, listed by NYSCEF document number (Motion 021) 360, 361, 362, 363, 364, 365, 366, 367, 368, 369, 370, 371, 372, 373, 374, 375, 376, 377, 378, 379, 380, 381, 382, 383, 384, 385, 386, 387, 388, 389, 390, 391, 392, 393, 395, 410, 411, 412, 413, 414, 415, 416, 417
 were read on this motion to/for DISCOVERY.

The following e-filed documents, listed by NYSCEF document number (Motion 022) 396, 397, 401
 were read on this motion to/for SEAL.

The following e-filed documents, listed by NYSCEF document number (Motion 023) 422, 423, 433
 were read on this motion to/for SEAL.

The following e-filed documents, listed by NYSCEF document number (Motion 024) 425, 426, 427, 428, 429, 430, 431, 432, 434, 435, 436, 437
 were read on this motion to/for ORDER OF PROTECTION.

Upon the foregoing documents and for the reasons set forth on the record, BDO USA, LLP's (BDO) motion (Mtn. Seq. No. 019) to dismiss James Stiles' third amended counterclaims and Stephen Morris' (Mr. Styles and Mr. Morris, hereinafter, collectively, the **Defendants**) first counterclaim is denied with respect to the defamation counterclaim. On a motion to dismiss, the pleading is to be afforded a liberal construction and the Court must accept the facts as alleged as true, accord the plaintiff the benefit of every possible favorable inference, and determine only whether the facts as alleged fit any cognizable legal theory (*Leon v Martinez*, 84 NY2d 83, 87-88 [1994]). Simply put, although it is of course appropriate to inform a client that the person handling their account is no longer with the firm and introduce the person who will be assuming the relationship, there does not appear to be a legitimate purpose in indicating that the defendants were implicated in a conspiracy or for attaching the complaint or for indicating that Ms. Cozza was shocked other than to besmirch the Defendants. Stated differently, the emails can not be said to lack the "sting" of defamation. The claim for tortious interference however fails. In sum and substance, Mr. Stiles argues that BDO slow rolled work to its client Phlow to hurt his relationship with Phlow where he had gone to work. This can not be said to be conduct directed at Mr. Stiles (*Arnon Ltd. V Beierwaltes*, 125 AD3d 453, 454 [1st Dept 2015]). Indeed, taking the allegations as the court must at this stage of the litigation, it is BDO's relationship with Phlow that would be hurt – not Mr. Stiles. As previously discussed, the serving of legitimate subpoenas can also not be said to be the basis for this claim.

The motions to compel discovery (Mtn. Seq. Nos. 20 and 21) are granted to the extent set forth on the record.

As discussed on the record, BDO's motions to seal (Mtn. Seq. Nos. 22 and 23) are granted solely to the extent of permitting BDO to redact the personal contact information contained in these documents and client information but is otherwise denied. BDO shall upload redacted reflecting only those redactions by Wednesday, September 28, 2022.

Lastly, as discussed on the record, BDO's motion for a protective order and to quash (Mtn. Seq. No. 024) must be granted solely to the extent that the Morgan Franklin subpoena must be quashed.

It is hereby ORDERED that BDO's motion to dismiss (Mtn. Seq. No. 019) Mr. Stiles' counterclaim for tortious interference with business relationship (third counterclaim) is granted without prejudice; and it is further

ORDERED that BDO's motion to compel (Mtn. Seq. No. 020) is granted in part; and it is further

ORDERED that Mr. Stiles shall produce to BDO or produce an affidavit indicating that he has duly produced all documents on or before October 21, 2022, the following documents: all documents and communications as requested by BDO except for the joint defense agreement by, between, or among Mr. Stiles, Mr. Jia-Sobota, Mr. Morris, and EverGlade; and it is further

ORDERED that defendant shall, within 30 days from production of the aforesaid documents, produce [John Jones or a witness with knowledge of the facts] for deposition, at the office of counsel for plaintiff, on a date and at a time convenient for the parties; and it is further

ORDERED that Defendants' motion to compel (Mtn. Seq. No. 021) is granted; and it is further

ORDERED that BDO shall produce to Defendants or produce an affidavit indicating that it has duly produced all documents on or before October 21, 2022, the following documents: all documents and communications as requested by Defendants; and it is further

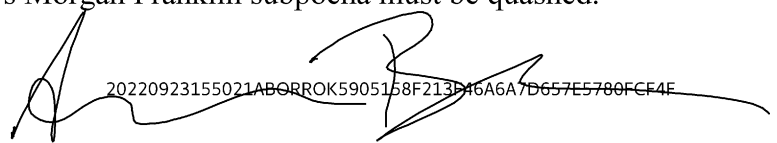
ORDERED that the Clerk of the Court is directed to seal NYSCEF Doc. Nos. 382, 383, 384, 385, 386, 387, 388, 389, 390, 391, 392, 412, 413, 414, 415, 416, and 417 in this action in its entirety (Mtn. Seq. Nos. 022, 023) upon service on him (60 Centre Street, Room 141B) of a copy of this order with notice of entry; and it is further

ORDERED that thereafter, or until further order of the Court, the Clerk of the Court shall deny access to NYSCEF Doc. Nos. 382, 383, 384, 385, 386, 387, 388, 389, 390, 391, 392, 412, 413, 414, 415, 416, and 417 to anyone (other than the staff of the Clerk or the court) except for counsel of record for any party to this case and any party; and it is further

ORDERED that such service upon the Clerk of the Court 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 BDO shall upload a redacted version of NYSCEF Doc. Nos. 382, 383, 384, 385, 386, 387, 388, 389, 390, 391, 392, 412, 413, 414, 415, 416, and 417 on or before September 23, 2022, at 5:00 PM; and it is further

ORDERED that BDO's motion for a protective order and to quash (Mtn. Seq. No. 024) is granted solely to the extent that the Defendant's Morgan Franklin subpoena must be quashed.


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9/23/2022
DATE

ANDREW S. BORROK, J.S.C.

CHECK ONE:

CASE DISPOSED

GRANTED

SETTLE ORDER

INCLUDES TRANSFER/REASSIGN

DENIED

NON-FINAL DISPOSITION

GRANTED IN PART

SUBMIT ORDER

FIDUCIARY APPOINTMENT

OTHER

REFERENCE

APPLICATION:

CHECK IF APPROPRIATE: