

Tribeca Preparatory LLC v Aninias
2022 NY Slip Op 33764(U)
November 3, 2022
Supreme Court, New York County
Docket Number: Index No. 154377/2022
Judge: Lyle E. Frank
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**SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY**

PRESENT: HON. LYLE E. FRANK PART 11M

Justice

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TRIBECA PREPARATORY LLC,
Plaintiff,

- v -

SHIRLEY ANINIAS, BRIAN SPARBER, READY, SET,
SHIRLEY ANINIAS SCHOOL CORPORATION

Defendant.

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INDEX NO. 154377/2022

MOTION DATE 08/04/2022

MOTION SEQ. NO. 002

**DECISION + ORDER ON
MOTION**

The following e-filed documents, listed by NYSCEF document number (Motion 002) 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, 36

were read on this motion to/for DISMISSAL.

Plaintiff brings the instant action alleging that defendants breached their fiduciary duties, their misappropriated plaintiff’s confidential and trade secret information, *inter alia*, all the while defendants were seeking to open and operate a competing school. Defendants move, pursuant to CPLR § 3211(a)(7) to dismiss the complaint for its failure to state a cause of action. For the reasons set forth below, the motion is granted to dismiss is granted in part.

It is well-settled that on a motion to dismiss for failure to state a cause of action pursuant to CPLR § 3211(a)(7), the pleading is to be liberally construed, accepting all the facts as alleged in the pleading to be true and giving the plaintiff the benefit of every possible inference. *See Avgush v Town of Yorktown*, 303 AD2d 340 [2d Dept 2003]; *Bernberg v Health Mgmt. Sys.*, 303 AD2d 348 [2d Dept 2003]. Moreover, the Court must determine whether a cognizable cause of action can be discerned from the complaint rather than properly stated. *Matlin Patterson ATA Holdings LLC v Fed. Express Corp.*, 87 AD3d 836, 839 [1st Dept 2011]. “The complaint must

contain allegations concerning each of the material elements necessary to sustain recovery under a viable legal theory." *Id.*

First Cause of Action: Breach of Fiduciary Duty

In order to adequately plead a cause of action, plaintiff must allege the existence of a fiduciary relationship, misconduct by the defendant and damages caused by the misconduct. *See Pokoik v Pokoik*, 115 AD3d 428, 429 [1st Dept 2014]. Pursuant to CPLR § 3016(b), where a cause of action alleges breach of trust, "the circumstances constituting the wrong shall be stated in detail".

Preliminary, the Court declines to consider defendant's affidavit submitted in support of the motion to dismiss. The Court limited its analysis on the legal arguments submitted in support of its motions as well as the contents of the four corners of the complaint.

Based on the allegations made in the complaint, the Court finds that the complaint is devoid of the requisite facts and allegations to establish a cause of action of breach of fiduciary duty. Specifically, the complaint is devoid of factual allegations of defendants' misconduct, rather the complaint is replete with conclusory language characterizing the defendants conduct as unlawful. While the complaint alleges that defendants' announcement that it would be opening a new school was unlawful, the contract between the parties does not prohibit competition. Moreover, the complaint does not specify the damages allegedly sustained by the alleged misconduct. Accordingly, the first cause of action for breach of fiduciary duty is dismissed.

Second Cause of Action: Misappropriation of Trade Secrets

To establish a cause of action alleging misappropriation of trade secrets, a plaintiff must allege "(1) that it possessed a trade secret, and (2) that the defendants used that trade secret in breach of an agreement, confidential relationship or duty, or as a result of discovery by improper

means" *Schroeder v Pinterest Inc.*, 133 AD3d 12, 27 [1st Dept 2015] (internal quotation marks citations omitted). "A trade secret is any formula, pattern, device or compilation of information which is used in one's business, and which gives him an opportunity to obtain an advantage over competitors who do not know or use it" *id* (internal quotation marks and citations omitted). To determine whether information constitutes a trade secret several factors should be considered,

"(1) the extent to which the information is known outside of [the] business; (2) the extent to which it is known by employees and others involved in [the] business; (3) the extent of measures taken by [the business] to guard the secrecy of the information; (4) the value of the information to [the business] and [its] competitors; (5) the amount of effort or money expended by [the business] in developing the information; (6) the ease or difficulty with which the information could be properly acquired or duplicated by others".

Id. Whether information is in fact a trade secret is generally a question (*Ashland Mgt. v Janien*, 82 NY2d 395, 407 [1993]).

Here, the Court finds that the complaint does allege sufficient facts or allegations to establish that information maintained by plaintiff constitute trade secrets, at this stage in the litigation. Further, the allegations that defendants used this information and that it was obtained solely on the basis of its confidential relationship with plaintiff are sufficient to survive the instant motion. While defendants argue that plaintiff has not alleged that defendants have improperly used this information, that is not the standard. The Court is satisfied that plaintiff's allegations that its customer lists, its educational plans and marketing plans are trade secrets, are sufficient to survive the instant motion to dismiss. Accordingly, the motion to dismiss the second cause of action is denied.

Third Cause of Action: Tortious Interference with Contract

The elements of tortious interference with a contract are: "(1) the existence of a contract between plaintiff and a third party; (2) defendant's knowledge of the contract; (3) defendant's intentional inducement of the third party to breach or otherwise render performance impossible; and (4) damages to plaintiff" (*Nero v Fiore*, 165 AD3d 823, 825 [2d Dept 2018]).

Here, the Court finds that the complaint is insufficient to state a cause of action for tortious interference with contract. The complaint is devoid of any allegations that any third party breached a contract with plaintiff as a direct result of defendants' inducement. Moreover, plaintiff has failed to articulate any damages, other than conclusory allegations that plaintiff has been damaged, there are no specific facts or allegations to support that contention. Accordingly, the fourth cause of action is dismissed.

Fourth Cause of Action: Tortious Interference with Prospective Economic Relations

To assert a claim for tortious interference with prospective economic relations the complaint must allege that: "(a) the plaintiff had business relations with a third party; (b) the defendant interfered with those business relations; (c) the defendant acted with the sole purpose of harming the plaintiff or by using unlawful means; and (d) there was resulting injury to the business relationship" (*Thome v Alexander & Louisa Calder Found.*, 70 AD3d 88, 108 [1st Dept 2009]). The First Department has held that these claims fail when plaintiff does not identify any specific customers it would have obtained if not for defendants conduct (*Learning Annex Holdings, LLC v Gittelman*, 48 AD3d 211, 211 [1st Dept 2008]).

Here, the Court finds that plaintiff has not pled sufficient facts to establish this cause of action. Specifically, the Court finds that the complaint is devoid of specific allegations that

defendants acted with the sole purpose of harming the plaintiff or by using unlawful means.

Accordingly, it is hereby

ORDERED that defendants' motion is granted in part and the first, third and fourth causes of action are hereby dismissed.

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LYLE E. FRANK, J.S.C.

11/3/2022

DATE

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