

**Directional Capital LLC v Butterfly Equity L.P.**

2023 NY Slip Op 31067(U)

April 4, 2023

Supreme Court, New York County

Docket Number: Index No. 653741/2022

Judge: Andrea Masley

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This opinion is uncorrected and not selected for official publication.

SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF NEW YORK: COMMERCIAL DIVISION PART 48

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DIRECTIONAL CAPITAL LLC,	<b>INDEX NO.</b>	<u>653741/2022</u>
Plaintiff,	<b>MOTION DATE</b>	<u>N/A</u>
- v -	<b>MOTION SEQ. NO.</b>	<u>001</u>
BUTTERFLY EQUITY L.P.,		
Defendant.	<b>DECISION + ORDER ON MOTION</b>	

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HON. ANDREA MASLEY:

The following e-filed documents, listed by NYSCEF document number (Motion 001) 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18

were read on this motion to/for DISMISS.

Upon the foregoing documents, it is

For the reasons stated on the record on March 20, 2023, defendant Butterfly Equity L.P.'s (Butterfly) motion to dismiss the complaint in its entirety is granted.

Plaintiff Directional Capital LLC (Directional) alleges that on August 9, 2022, Butterfly announced that it was buying Qdoba Restaurant Corp. (Qdoba) with financing from King Street Capital Management, L.P. (King Street). (NYSCEF 1, Complaint ¶¶ 50, 53.) Directional alleges that this deal violates Directional's Joinder Agreement with Butterfly.

Plaintiff's reliance on the "non-circumvention" provision in the Joinder Agreement is misplaced. On October 27, 2021, Butterfly executed the Joinder Agreement which provides:

"you hereby agree that, for a period of 12 months, you, your officers and directors will not contact, deal with or otherwise become involved with any entity or any other entities or parties introduced by or through by Counterparty and the

Company, its officers, directors, agents or associates, with respect to the Transaction, without the specific written approval of Counterparty; provided, nothing herein shall restrict contacts or communications made in the ordinary course of business unrelated to the Transaction;”

(NYSCEF 9, Joinder Agreement ¶ 5.)

By contrast, the “Non-solicitation” clause in the Confidentiality Agreement between the parties provides:

“[Y]ou will not, nor will any of your Representatives, hire or solicit for employment any Company employees to whom you may be introduced or with whom you otherwise had contact as a result of your consideration of a Transaction . . .”

(NYSCEF 9, Confidentiality Agreement at 9.1)

The provision in the Confidentiality Agreement “or with whom you otherwise had contact as a result of your consideration of a Transaction,” absent from the Joinder Agreement, is meaningful. Plaintiff cannot import such a provision into the non-circumvention provision of the Joinder Agreement. Clearly, the parties knew how to draft broadly. The absence of such a provision from the non-circumvention provision must be given meaning. The non-circumvention provision is limited to introductions.

Directional alleges that it “introduced Butterfly to Qdoba with respect to the Transaction,” and “provided Butterfly with Directional’s Qdoba Management Presentation, which contained an overview of Qdoba’s business, finances, property, and potential for new development.” (NYSCEF 1, Complaint ¶¶ 3, 37.) However, the documentary evidence shows Butterfly’s independent contemplation of the merger and its dealings with Qdoba, Qdoba’s holding company, Quidditch Topco Inc. (Quidditch), and King Street, years prior to meeting Directional. On November 20, 2019, Butterfly

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<sup>1</sup> References to page numbers are to the NYSCEF-generated page numbers.

entered into a confidentiality agreement with Quidditch to explore purchasing Qdoba. (NYSCEF 11, 2019 Confidentiality Agreement; NYSCEF 13, February 19, 2022 Extension Agreement.) Indeed, King Street introduced Directional to Butterfly. (NYSCEF 8, Complaint ¶¶28, 29.) Therefore, the court is compelled to conclude that Directional did not introduce Butterfly to this transaction or its participants.

Directional's unjust enrichment claim fails because it is duplicative of the conduct covered by the Joinder Agreement. To the extent that Directional reframes its unjust enrichment claim, by arguing in its opposition to the motion that the claim is premised on Butterfly's alleged use of Directional's confidential materials shared by King Street, the unjust enrichment claim fails because Directional failed to plead any facts that King Street shared confidential materials with Butterfly or that Butterfly used those materials to effectuate the merger.

The court has considered the parties' remaining arguments and finds them unavailing, without merit, or otherwise not requiring an alternate result.

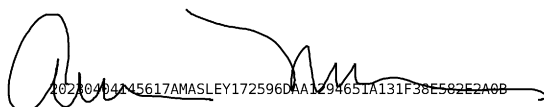
ORDERED that the defendant's motion to dismiss is granted and the complaint is dismissed; and it is further

ORDERED that plaintiff is granted leave to serve and file an amended complaint so as to replead within 20 days of the date of this decision and order; and it is further

ORDERED that, in the event that plaintiff fails to serve and file an amended complaint in conformity herewith within such time, leave to replead shall be deemed denied, and the Clerk of the Court, upon service upon him of a copy of this order with notice of entry and an affirmation/affidavit by defendant's counsel attesting to such non-

compliance, is directed to enter judgment dismissing the action, with prejudice, and with costs and disbursements to the defendant as taxed by the Clerk; 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)].



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4/4/2023

DATE

ANDREA MASLEY, J.S.C.

CHECK ONE:

CASE DISPOSED  
 GRANTED  DENIED

NON-FINAL DISPOSITION  
 GRANTED IN PART  OTHER

APPLICATION:

SETTLE ORDER

SUBMIT ORDER

CHECK IF APPROPRIATE:

INCLUDES TRANSFER/REASSIGN

FIDUCIARY APPOINTMENT  REFERENCE