

B N Textile Inc. v Alhalabi

2023 NY Slip Op 31260(U)

April 18, 2023

Supreme Court, Kings County

Docket Number: Index No. 510480/2022

Judge: Leon Ruchelsman

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SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF KINGS : CIVIL TERM: COMMERCIAL 8

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B N TEXTILE INC.,

Plaintiff, Decision and order

- against - Index No. 510480/2022

HENRI ALHALABI, LMT NYC INC., OLMT NYC
INC. and JOHN DOES 1-10,

Defendants, April 18, 2023

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PRESENT: HON. LEON RUCHELSMAN Motion Seq. #2 & #3

The plaintiff has moved seeking the production of certain discovery from the defendants. The defendants have cross-moved seeking to dismiss the cause of action of tortious interference with economic advantage. The motions have been opposed respectively. Papers were submitted by the parties and after reviewing all the arguments this court now makes the following determination.

According to the Verified Complaint, the plaintiff corporation is solely owned by Vectour Alhababi. The corporation sources, manufactures and wholesales white label garments for retail sale in the United States. The defendant Henri Alhalabi, Vectour's brother worked at the plaintiff company since 2003. The Verified Complaint alleges Henri established the defendant corporations and diverted clients, materials and goods and funds away from the plaintiff to his other entities. This lawsuit followed and the plaintiff has asserted causes of action for violations of the faithless servant doctrine, breach of fiduciary duties, tortious interference with prospective economic

advantage, unfair competition and unjust enrichment. Motions have been filed seeking discovery and also seeking to dismiss the tortious interference claim.

Conclusions of Law

It is well settled that upon a motion to dismiss the court must determine, accepting the allegations of the complaint as true, whether the party can succeed upon any reasonable view of those facts (Ripa v. Petrosyants, 203 AD3d 768, 160 NYS3d 658 [2d Dept., 2022]). Further, all the allegations in the complaint are deemed true and all reasonable inferences may be drawn in favor of the plaintiff (BT Holdings, LLC v. Village of Chester, 189 AD3d 754, 137 NYS2d 458 [2d Dept., 2020]). Whether the claims will later survive a motion for summary judgment, or whether the plaintiff will ultimately be able to prove its claims, of course, plays no part in the determination of a pre-discovery CPLR §3211 motion to dismiss (see, Redwood Property Holdings, LLC v. Christopher, 211 AD3d 758, 177 NYS3d 895 [2d Dept., 2022]).

In order state a claim for tortious interference with prospective economic advantage the plaintiff must allege specific business relationships with an identified third party with which the defendant interfered and that the defendant either employed wrongful means or acted for the sole purpose of inflicting intentional harm on plaintiff (Mehrhof v. Monroe-Woodbury Central

School District, 168 AD3d 713, 91 NYS3d 503 [2d Dept., 2019], Influx Capital LLC v. Pershin, 186 AD3d 1622, 131 NYS3d 712 [2d Dept., 2020]). "Wrongful means" includes physical violence, fraud, misrepresentation, civil suits, criminal prosecutions and some degree of economic pressure. Thus, more than simple persuasion is required (Guard-Life Corporation v. S. Parker Hardware Manufacturing Corp., 50 NY2d 183, 428 NYS2d 628 [1980]). Notwithstanding the fact the relationship appears to have already existed making any "prospective" relationship curious indeed, in any event the court will examine this cause of action and the facts alleged. The plaintiff alleges the defendant's conduct caused a disruption of the relationship between the plaintiff's "largest wholesale customer" (see, Verified Complaint, ¶21 [NYSCEF Doc. No. 1]) and the plaintiff. Specifically, the plaintiff asserts that "Defendants interfered with and caused the termination of such relationships using dishonest, unfair and improper means, namely by diverting payment and orders for products to themselves instead of to BNT, thereby embezzling funds, unfairly competing and usurping BNT's business opportunities, and did so an immoral way while working full-time for BNT and receiving a salary from BNT" (see, Verified Complaint, ¶62 [NYSCEF Doc. No. 1]). The Verified Complaint thus alleges the plaintiff engaged in wrongful conduct by misrepresenting the true party with whom the customers were

transacting. While of course further discovery will sharpen that issue at this juncture the Verified Complaint adequately alleges the tortious interference of a prospective economic advantage and consequently the motion seeking to dismiss that cause of action is denied.

Turning to the motion seeking discovery, it is well settled that an employee owes a duty of good faith and loyalty to an employer in the performance of the employee's duties (McKinnon Doxsee Agency Inc., v. Gallina, 187 AD3d 733, 132 NYS2d 144 [2d Dept., 2020]). Further, an employee maintains a fiduciary duty to an employer. As the court noted in Nielson Co. (US) LLC v. Success Systems Inc., 2013 WL 1197857 [S.D.N.Y. 2013] "as a matter of law, an employee owes a fiduciary duty to his employer and is prohibited from acting in any manner inconsistent with his agency or trust and is at all times bound to exercise the utmost faith and loyalty in the performance of his duties" (id). Clearly, there is no basis to argue no such duty is owed. Current employees and owners of a corporation may not actively engage in competition at the expense of that corporation (Ritani LLC v. Aghjayan, 970 F.Supp. 232 [S.D.N.Y. 2013]). Therefore, the motion seeking any and all information contained in the discovery requests while the defendant was still employed by the plaintiff corporation is granted.

However, former employees of a corporation may compete with


that corporation. (Abraham Zion Corp., v. Lebow, 593 F.Supp. 551 [S.D.N.Y. 1984]). Thus, "New York law does not prohibit an employee from engaging in head to head competition with a former employer, provided that the employee does not unfairly compete such as through the use of proprietary information misappropriated from the former employer" (see, Innoviant Pharmacy, Inc., v. Morganstern, 390 F.Supp2d 179 [N.D.N.Y. 2005]). The plaintiff does not allege the defendant utilized proprietary information. Rather, plaintiff argues that "because Henry learned everything about Plaintiff's business during his employment for Plaintiff and developing relationships with Plaintiff's employers and vendors while receiving a salary from Plaintiff, he cannot strike out on his own and concentrate on servicing Plaintiff's customers almost exclusively. That post-employment conduct constitutes unfair competition" (see, Affirmation in Support of Motion to Compel, ¶33 [NYSCEF Doc. No. 46]). However, "knowledge of the intricacies of a business operation does not necessarily constitute a trade secret and absent any wrongdoing it cannot be said that a former employee 'should be prohibited from utilizing his knowledge and talents in this area'" (see, Walter Karl Inc., v. Wood, 137 AD2d 22, 528 NYS2d 94 [2d Dept., 1988]). Thus, without any improper conduct there is nothing prohibiting the defendant from soliciting the plaintiff's clients. There is no per se impropriety that bars a

former employee from such competition simply because the former employee has knowledge of the business. Therefore, any discovery for any time period after the defendant no longer worked for the plaintiff corporation is not relevant in this lawsuit at all. Therefore, that portion of the motion to compel is denied.

So ordered.

ENTER:

DATED: April 18, 2023
Brooklyn N.Y.



Hon. Leon Ruchelsman
JSC