

**Restaurant Zone LLC v Myers**

2023 NY Slip Op 32751(U)

August 4, 2023

Supreme Court, New York County

Docket Number: Index No. 651653/2023

Judge: Margaret A. Chan

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**SUPREME COURT OF THE STATE OF NEW YORK  
NEW YORK COUNTY**

PRESENT: HON. MARGARET A. CHAN PART 49M

*Justice*

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<p>THE RESTAURANT ZONE LLC,</p> <p style="text-align: center;">Plaintiff,</p> <p style="text-align: center;">- v -</p> <p>KAREN MYERS, STEVENS &amp; COMPANY LLC d/b/a THE CHEF AGENCY, STEVE KAMALI, et.al.</p> <p style="text-align: center;">Defendants.</p> <p>-----X</p>	<p>INDEX NO. <u>651653/2023</u></p> <p>MOTION DATE <u>04/24/2023, 06/07/2023</u></p> <p>MOTION SEQ. NO. <u>(MS) 001 002</u></p>
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**DECISION + ORDER ON  
MOTION**

The following e-filed documents, listed by NYSCEF document number (MS 001) 24, 25, 26, 27, 28, 29, 31, 33, 34, 39, 40, 41

were read on this motion to/for INJUNCTION/RESTRAINING ORDER.

The following e-filed documents, listed by NYSCEF document number (MS 002) 35, 36, 37, 38, 42, 43 were read on this motion to/for DISMISSAL.

Plaintiff The Restaurant Zone, LLC is a recruitment agency in the restaurant, hospitality, and hotel industry. Defendants Stevens & Co. d/b/a The Chef Agency (Chef) is another recruitment company in the same industry; defendant Steve Kamali is its Chief Executive Officer. Defendant Karen Myers was a recruiter for plaintiff who, upon leaving her employment with plaintiff, commenced working for Chef despite a two-year non-compete agreement she had with plaintiff. Thus, plaintiff commenced suit against defendants alleging six causes of action: (i) violations of the Defend Trade Secrets Act, 18 U.S.C. § 1836; (ii) trade secrets misappropriation; (iii) breach of contract; (iv) tortious interference with an existing contract against the Chef defendants; (v) tortious interference with prospective contractual relations against the Chef defendants; and (vi) conversion. Plaintiff asserts that all defendants are jointly and severally liable for each count of action because defendants' actions constitute civil conspiracy (Compl ¶ 162).<sup>1</sup>

Plaintiff then moved by order to show cause for a temporary restraining order,<sup>2</sup> and a preliminary injunction to enjoin defendants from allegedly using or disclosing plaintiff's trade secrets, poaching plaintiff's employees, and continuing to

<sup>1</sup> Plaintiff also mentions other liability theories such as the agency theory, piercing the corporate veil, and alter-ego.

<sup>2</sup> The court declined to sign the Temporary Restraining Order (NYSCEF # 34).

employ plaintiff's former employees who were solicited by Chef (MS 001). Defendants oppose plaintiff's motion. Defendants also move to partially dismiss plaintiff's action pursuant to CPLR 3211(a)(7) (in MS 002).

For the following reasons, plaintiff's motion for a preliminary injunction (MS 001) is denied, and defendants' motion to dismiss certain causes of action (MS 002) is granted.

### BACKGROUND

Kamali is Chef's Chief Executive Officer (NYSCEF # 40, ¶¶ 1, 5). On September 23, 2021, Myers signed an offer letter to work for plaintiff as a recruiter (NYSCEF # 5 – Offer Letter). The Offer Letter subjects Myers to “a 2 year non-compete to [plaintiff] (starting at the end of the employment)” (Non-Compete Clause) and prohibits Myers from “steal[ing] or distribut[ing] [plaintiff's] company data and disclos[ing] trade secrets” (Confidentiality Clause) (*id.* at 3). The Offer Letter also provides that if Myers violates either clause, plaintiff can reverse-charge Myers' commissions for damages or recover from Myers “a lump sum fee of up to \$100,000” (*id.*).

Plaintiff submits a copy of its Company Policy, which contains in part: (i) a confidentiality clause; (ii) a three-year non-compete clause; and (iii) a non-solicitation clause (NYSCEF # 13 – Company Policy at 6-8, 33). Myers avers that she did not sign the Company Policy at any time during her employment with plaintiff because it did not exist then (NYSCEF # 41 – Myers Aff., ¶ 3). The court notes that Myer's signature does not appear on the Company Policy.

Myers' employment with plaintiff ended in June 2022. In the same month, Myers started with Chef as Senior Regional Partner (NYSCEF # 14). Plaintiff claims that Myers' employment with Chef violates the Non-Compete Clause, which in turn caused plaintiff to sustain damages of at least \$500,000. Hence, plaintiff seeks a preliminary and permanent injunction to prevent further breach (Compl ¶¶ 136-139, 141). Plaintiff also claims that it is entitled to monetary damages of at least \$100,000 for each employee who violated the Non-Compete Clause and additional damages of at least \$75,000 for each violation of the Confidentiality Clause (Compl ¶ 140).

As to the breach of contract claim against the Chef defendants (Compl ¶ 138), plaintiff asserts that because the Chef defendants coordinated with Myers in breaching the Offer Letter, plaintiff has a breach of contract claim against the Chef defendants (NYSCEF # 42 at 14). Plaintiff contends that Myers disclosed plaintiff's trade secrets and confidential information to Chef and that Chef and Myers misappropriated plaintiff's trade secrets (Compl ¶¶ 91, 115-117). Additionally,

plaintiff argues that defendants “have exercised dominion over [plaintiff’s] [t]rade [s]ecrets . . . to the derogation of [p]laintiff’s rights” (Compl ¶¶ 158, 159).

Plaintiff states that it owns and possesses “trade secret information relating to its business practices, client lists, sales process” (Compl ¶ 104). The trade secrets are: (i) a hospitality candidate database that plaintiff “developed over nearly a decade” to be “specifically tuned for effective use in the hospitality industry” (Candidate Database); (ii) plaintiff’s “procedures and processes for soliciting customers and candidates” (Business Practice); and (iii) “the identity of [p]laintiff’s staff and the terms of their employment, including the financial terms of their compensation” (Employment Information) (Compl ¶¶ 52-53, 56, 105-107).

As plaintiff describes, the Candidate Database has “802,000 restaurant/hospitality pre-screened candidates across the US & Canada” and is “the largest database of hospitality candidates in the nation” (Compl ¶¶ 52-53). Plaintiff has been developing this Candidate Database over the past seven years; its efforts include a purchase of another global database of more than 200 million candidates in the late 2020 (NYSCEF # 12 at 2, Compl ¶ 54). Plaintiff believes that the Candidate Database “derives independent economic value by not being generally known” (Compl ¶¶ 55, 56). Therefore, plaintiff has in place the Confidentiality Clauses in the Offer Letter and the Company Policy to maintain the confidentiality of its trade secrets (Compl ¶¶ 59-66). The Complaint describes the Business Practice and Employment Information as containing such information with “independent economic value from not being generally known” (Compl ¶ 114).

Plaintiff recalls disclosing certain trade secrets to Myers with the expectation of secrecy (Compl ¶ 115). Plaintiff alleges that Myers had inquired about “sensitive business information” that was not relevant to her role as a recruiter and then disclosed plaintiff’s confidential information to Chef when she switched jobs (Compl ¶¶ 82, 91, 115-117, 164). In particular, “Chef discussed the existence and the terms of the Offer Letter and [Company Policy] with Myers when interviewing her for a position” with Chef, which then hired Myers for her disclosure of trade secrets. Plaintiff claims that Chef knew that their actions caused Myers’ breach of the Non-Compete Clause, violated the Defend Trade Secrets Act, and are “actionable as [t]rade [s]ecret [m]isappropriation under New York common law” (Compl ¶¶ 82, 83, 103, 128).

Between August and October 2022, three of plaintiff’s employees—Allana Lovewell, Burchay Ozer, and Alicia Ambrose-Fino (the former recruiters) —started working for Chef (Compl ¶¶ 93-95). Plaintiff believes that the Chef defendants intentionally poached Myers and the former recruiters despite knowing plaintiff’s contracts with them (Compl ¶¶ 146-148, 152-154). And Myers in turn solicited these three employees based on the relationships she had developed with them while

working for plaintiff and through plaintiff's "confidential information and trade secrets" (Compl ¶¶ 92, 96).

To plaintiff, defendants' conduct amounted to "unlawful poaching," hence plaintiff's counsel sent a cease-and-desist letter to Myers on September 2, 2022, demanding that she refrain from soliciting plaintiff's employees and customers and cease working for Chef during the two-year non-compete period (NYSCEF # 3). Thereafter, on October 5, 2022, plaintiff's Chief Executive Officer, Matthew Rodgers, emailed Kamali, Chief Executive Officer of Chef, that plaintiff "believe[s] [Myers] and other people at The Chef Agency are soliciting [plaintiff's] current employees" and plaintiff "anticipate[s] that these actions are being performed without [Kamali's] knowledge or at least without [Kamali's] knowledge of the violation of the restrictive covenants in their contracts" (NYSCEF # 4). Plaintiff "would hope that [Kamali] would . . . instruct[] [his] employees to cease and desist from poaching behavior against [plaintiff]" (*id.*). However, in March 2023, plaintiff learned that defendants engaged in "another round of raiding" targeting "two of [p]laintiff's top producers"—McKenna Brewer and Austin W. Breen (Compl ¶¶ 97, 98). As a result, plaintiff brought this action to enjoin the alleged solicitation of employees.

In response, Kamali avers that these employees sought out Chef for employment, that Ozer left plaintiff months before working for Chef. And as for McKenna Brewer and Austin Breen, defendants claim that they have not hire them and are not in discussions with them (NYSCEF # 40 – Kamali aff, ¶¶ 16-18). Kamali denies using any plaintiff's confidential, trade secret or proprietary information to hire. Chef's hiring practice is to send "blast" email to groups that have "hospitality recruiter" or similar on their LinkedIn page (*id.*, ¶¶ 13, 14).

## DISCUSSION

### I. Plaintiff's Motion for a Preliminary Injunction (MS 001)

A preliminary injunction is drastic remedy, and thus should not be granted unless the movant demonstrates "a clear right" to such relief (*City of New York v 330 Continental LLC*, 60 AD3d 226, 234 [1st Dept 2009]; see *Soundview Cinemas, Inc. v AC I Soundview LLC*, 149 AD3d 1121, 1123 [2d Dept 2017] ["[t]he remedy of granting a preliminary injunction is a drastic one, which should be used sparingly"). "A party seeking a preliminary injunction must demonstrate, by clear and convincing evidence, (1) a likelihood of success on the merits, (2) irreparable injury absent the granting of the preliminary injunction, and (3) a balancing of the equities in the movant's favor" (*Gilliland v Acquafredda Enterprises, LLC*, 92 AD3d 19, 24 [1st Dept 2011], citing CPLR 6301; *Nobu Next Door, LLC v Fine Arts Hous., Inc.*, 4 NY3d 839 [2005]). If one of the three requirements is not proven "by affidavit

and other competent proof, with evidentiary detail,” a preliminary injunction must be denied (*Faberge Intern., Inc. v Di Pin*, 109 AD2d 235, 240 [1st Dept 1985]).

Plaintiff seeks to enjoin defendants from using or disclosing plaintiff's trade secrets; and poaching plaintiff's employees and continuing to employ plaintiff's former employees who were solicited by Chef.

Plaintiff alleges that its Candidate Database, Business Practice, and Employment Information are all trade secrets that defendants misappropriated. And, plaintiff proposes that the non-recruitment clause should also be evaluated under the misappropriation of trade secret standards because “relationships with former co-workers are quintessential trade secrets.” (NYSCEF # 25 – MOL at 7).

“To plead misappropriation of a trade secret under the [Defend Trade Secrets Act], 18 U.S.C. § 1832, *et seq.*, a plaintiff must show an unconsented disclosure or use of a trade secret by one who (i) used improper means to acquire the secret, or, (ii) at the time of disclosure, knew or had reason to know that the trade secret was acquired through improper means” (*24 Seven, LLC v Martinez*, 2021 WL 276654, at \*4 [SDNY Jan. 26, 2021] [internal citations and quotation marks omitted]). Likewise, under New York law, a party claiming misappropriation of a trade secret must prove that “(1) it possessed a trade secret, and (2) defendant is using that trade secret in breach of an agreement, confidence, or duty, or as a result of discovery by improper mean” (*E.J. Brooks Co. v Cambridge Sec. Seals*, 31 NY3d 441, 452-453 [2018]).

When determining whether information constitutes a trade secret, New York courts consider the below factors:

- (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.

*Schroeder v Pinterest Inc.*, 133 AD3d 12, 27 [1st Dept 2015], citing *Ashland Mgt. Inc. v Janien*, 82 NY2d 395, 407 [1993].

Applying these standards, plaintiff has not shown that its Candidate Database, Business Practice, and Employment Information are all trade secrets. While the term trade secrets is clearly not defined (*Ashland Mgt. Inc.*, 82 NY2d at 407), what is clear is that the Employment Information cannot be a trade secret when plaintiff's employee identities are public information available online,

including on LinkedIn (NYSCEF # 38). Also, “salary information . . . do[es] not fall within the definition of ‘trade secret’” (*ENV Services, Inc. v Alesia*, 10 Misc 3d 1054(A) [Sup Ct, Nassau County 2005], citing *Ashland Mgt. Inc.*, 82 NY2d at 407). As to the Business Practice, plaintiff does not identify with particularity what makes it a trade secret (*Zirvi v Flatley*, 433 F Supp 3d 448, 465 [SDNY 2020] [finding that plaintiff failed to identify [such] alleged secrets with ‘sufficient particularity], *affd*, 838 Fed Appx 582 [2d Cir 2020]).

In any event, aside from the conclusory nature of plaintiff’s allegations on recruitment, plaintiff does not allege any particular candidates in the Candidate Database that defendants have contacted. Nor does it explain how defendants have used plaintiff’s Employment Information to poach plaintiff’s employees or how defendants have used plaintiff’s Business Practice to solicit plaintiff’s candidates. While plaintiff names three former employees – Lovewell, Ozer, and Ambrose-Fino, as those who allegedly were poached by the Chef defendants, plaintiff also posit that Myers used her relationship with the three former employees to lure them to work for Chef, employees’ use of their personal knowledge is not improper (*see Howard Sys. Intern., Inc. v IMI Sys., Inc.*, 192 AD2d 371, 372 [1st Dept 1993]).

Plaintiff’s proposal to apply the misappropriation of trade secrets standard to the non-recruitment clause is troubling as recruiters would be “virtual hostages of their employers” (*Reed, Roberts Assoc., Inc. v Strauman*, 40 NY2d 303, 309 [1976]). But in this case, applying the misappropriation standard to the non-recruitment clause does not help plaintiff. Critically, plaintiff does not show how these three employees’ profiles cannot be discovered through other means that are available to the public such as via LinkedIn. As the Chef defendants explain, a search on LinkedIn will produce candidates whose profiles include the term ‘hospitality recruiter’; the three former employees are hospitality recruiters.

In sum, plaintiff’s conclusory assertions are inadequate to establish a likelihood of success on its allegation that defendants misappropriated trade secrets (*see Ferring B.V. v Allergan, Inc.*, 4 F Supp 3d 612, 627-628 [SDNY 2014]; *cf. Catalyst Advisors, L.P. v Catalyst Advisors Inv’rs Glob. Inc.*, 602 F Supp 3d 663 [SDNY 2022] [plaintiff alleged sufficient acts of misappropriation]; *cf. Transaero, Inc. v Chappell*, 2014 WL 1783732, at \*12 [EDNY May 6, 2014] [specifying examples of defendant’s misappropriation of the trade secrets of plaintiff]).

In any event, even if plaintiff were likely to succeed on its misappropriation of trade secrets claim, plaintiff has not shown that it would suffer irreparable injury absent a preliminary injunction. Irreparable injury “cannot be presumed” (*Invesco Institutional (N.A.), Inc. v Deutsche Inv. Mgt. Americas, Inc.*, 74 AD3d 696, 697 [1st Dept 2010]). In seeking a preliminary injunction, plaintiff must “demonstrate, by clear and convincing evidence . . . irreparable injury absent the granting of the preliminary injunction” (*Uber Tech., Inc. v Am. Arbitration Assn., Inc.*, 204 AD3d

506, 508 [1st Dept 2022]). “Even if plaintiff could show that it was likely to succeed on the merits of its claim[s],” courts will not grant a preliminary injunction if a plaintiff fails to demonstrate that “its potential damages are not compensable in money and capable of calculation” (*Louis Lasky Mem. Med. and Dental Ctr. LLC v 63 W. 38th LLC*, 84 AD3d 528 [1st Dept 2011]; *Am. Para Professional Sys., Inc. v Hooper Holmes, Inc.*, 13 AD3d 167, 168 [1st Dept 2004] [preliminary injunction is unwarranted if plaintiff fails to establish irreparable injury]).

Irreparable harm can be established if a trade secret has been misappropriated (*Marietta Corp.*, 301 AD2d at 737). But here, “[a]bsent evidence of actual misappropriation by an employee,” plaintiff’s speculation that Myers would “inevitably disclose” to the Chef defendants plaintiff’s proprietary information is insufficient to establish irreparable injury or justify a preliminary injunction (*U.S. Re Companies, Inc. v Scheerer*, 41 AD3d 152, 155 [1st Dept 2007] [without “concrete evidence that the employee has actually breached a confidentiality agreement,” plaintiff’s “speculation is not a basis for the imposition of a preliminary injunction”]; *Marietta Corp.*, 301 AD2d at 737 [New York courts disfavor the doctrine of inevitable disclosure in determining irreparable injury]).

And as for plaintiff’s breach of contract claim against Myers, the Offer Letter specifies that plaintiff’s damages for Myers’ violations of the Non-Compete Clause and the Confidentiality Clause is “a lump sum fee of up to \$100,000” (NYSCEF # 5). Damages “compensable in money and capable of calculation” are not irreparable (*Mintz Fraade Law Firm, P.C. v Fed. Ins. Co.*, 193 AD3d 654, 656 [1st Dept 2021], *lv to appeal denied*, 37 NY3d 919 [2022]).

It is also noted that plaintiff commenced this action in March 2023, six months after the alleged solicitation by Myers of plaintiff’s employees (NYSCEF #s 3, 4). Here, plaintiff contacted Myers and Kamali about the alleged solicitation of plaintiff’s employees in September and October 2022 and then waited almost six months to commence this action on March 31, 2023 and to seek injunctive relief (NYSCEF #s 3, 4). Plaintiff’s unexplained delay in commencing this action undercuts its assertion of irreparable injury (*Casita, L.P. v MapleWood Equity Partners (Offshore) Ltd.*, 43 AD3d 260, 260 [1st Dept 2007] [finding that plaintiff failed to demonstrate irreparable injury particularly since it offered no justification for a seven-month delay in requesting for injunction]).

Plaintiff has not established it will suffer irreparable injury.

In conclusion, plaintiff has not adequately demonstrated a likelihood of success on the merits, and even if it did, it has not established it would suffer irreparable injury absent a preliminary injunction. As such, this third consideration – balance of equities – in determining whether plaintiff should be granted

injunctive relief, will not be addressed (*Faberge Intern., Inc.*, 109 AD2d at 240). Plaintiff's motion for preliminary injunction is denied.

## II. Defendants' Motion to Dismiss (MS 002)

Defendants move, pursuant to CPLR 3211(a)(7), to dismiss the first cause of action for violation of the Defend Trade Secrets Act; the second cause of action for trade secret misappropriation; the third cause of action for breach of contract as against the Chef defendants and Kamali; the sixth cause of action for conversion; and the "seventh" cause of action for civil conspiracy<sup>3</sup> (NYSCEF #'s 36 – MOL at 1). Defendants add that Kamali is not personally liable for any claims.

On a motion to dismiss pursuant to CPLR 3211(a)(7), the court "must accept as true the facts as alleged in the complaint and submissions in opposition to the motion, accord [the non-movant] the benefit of every possible favorable inference and determine only whether the facts as alleged fit within any cognizable legal theory" (*Whitebox Concentrated Convertible Arb. Partners, L.P. v Superior Well Servs., Inc.*, 20 NY3d 59, 63 [2012] [internal quotation omitted]; *accord Pavich v Pavich*, 189 AD3d 548, 549 [1st Dept 2020]). "However, allegations consisting of bare legal conclusions, as well as factual claims inherently incredible or flatly contradicted by documentary evidence are not entitled to such consideration" (*Caniglia v Chicago Tribune-New York News Syndicate, Inc.*, 204 AD2d 233, 233 [1st Dept 1994]; *Cangro v Reitano*, 92 AD3d 483 [1st Dept 2012] ["the complaint states no causes of action upon which relief may be granted, as it merely sets forth bare legal conclusions"]; *Ashcroft v Iqbal*, 556 US 662, 663 [2009] ["the tenet that a court must accept a complaint's allegations as true is inapplicable to threadbare recitals of a cause of action's elements, supported by mere conclusory statements"]).

### *Trade Secret Claims (1st & 2nd Causes of Action)*

The branches of defendants' motion to dismiss the first cause of action for trade secrets misappropriation under the Defend Trade Secrets Act and under New York law and the second cause of action for trade secrets misappropriation are granted.

As a threshold issue, defendants posit that this court lacks subject matter jurisdiction over plaintiff's Defend Trade Secrets Act claim because this claim is a federal cause of action (NYSCEF # 36 at 6). Defendants are mistaken. In enacting the Defend Trade Secrets Act, 18 U.S.C. § 1836, Congress specifically chose not to limit the jurisdiction to hear claims under this Act solely to federal courts (18 U.S.C. § 1836[c] [granting federal district courts original but not exclusive jurisdiction over

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<sup>3</sup> Plaintiff does not assert a seventh cause of action in the complaint. Rather, after the sixth cause of action, plaintiff adds at a cause of action for Civil Conspiracy for all the causes of action. Defendants characterized this added cause of action for Civil Conspiracy as the seventh cause of action.

Defend Trade Secrets Act claims)). Since Congress has not reserved jurisdiction over Defend Trade Secrets Act claims to exclusively federal district courts, this court has concurrent jurisdiction over such claims (*compare* 18 U.S.C. § 1836[c] with 28 U.S.C. § 1334 [“the district courts shall have original *and exclusive* jurisdiction of all cases under title 11 [of the Bankruptcy Code]”] [emphasis added]; *see Preferred Freezer Services, LLC v Americold Realty Tr.*, 2020 WL 774132, \*4 [SDNY Feb. 18, 2020, No. 19-CV-2926 (VSB)] [“we] defer to Congress’s assessment, which granted state courts concurrent jurisdiction over Defend Trade Secrets Act claims”]; *see also Zhang v Trusted Insight, Inc.* [Sup Ct, New York County 2021] [dismissing defendants’ Defend Trade Secrets Act counterclaim not for lack of jurisdiction but for pleading deficiency]).

In any event, defendants contend that plaintiff fails to sufficiently allege that defendants own, let alone improperly use, any cognizable trade secrets (NYSCEF # 36 at 6-9). The trade secrets that plaintiff alleges to have are its Key Marketing Pitch; its database of 200,802,000 names; its staff and terms of employment; and its business practices. However, as discussed above in the preliminary injunction section, not only are plaintiff’s allegations conclusory, but these alleged trade secrets are also discoverable from sources available to the public such as LinkedIn, and what plaintiff characterizes as trade secret is not so.

“Courts dismiss trade secrets claims when the alleged trade secrets are not, in fact, secret, or when the plaintiffs have not alleged sufficiently how the secrets derive independent economic value from not being generally known” (*Zirvi*, 433 F Supp 3d at 465). “[T]he law requires that a trade secret plaintiff identify trade secrets with reasonable particularity” (*MSCI Inc. v Jacob*, 36 Misc 3d 211, 213 [Sup Ct, New York County 2012]). However, plaintiff has not identified its alleged trade secrets—Business Practice and Employment Information—with sufficient particularity. The Complaint is void of any detailed description of the Business Practice and Employment Information. Simply asserting that such information drive independent economic value from not being generally known is insufficient, because “conclusory statements cannot substitute for minimally sufficient factual allegations” (*Dataline, Inc. v MCI WorldCom Network Services, Inc.*, 2001-1 Trade Cases P 73206 [SDNY Feb. 6, 2001]; *Kavanagh v Zwilling*, 578 Fed Appx 24 [2d Cir 2014] [“we do not accept as true conclusions unsupported by the facts alleged, legal conclusions, bald assertions, or unwarranted inferences”]).

Moreover, courts will dismiss claims for trade secret misappropriation if a plaintiff “has pled no facts that support [the] assertion” that defendants “obtained the [trade secrets] through improper means (*Pauwels v Bank of New York Mellon Corp.*, 2021 WL 1164501, at \*4 [SDNY Mar. 26, 2021] [dismissing plaintiff’s trade secret misappropriation claim]; *see Falconwood Corp. v In-Touch Tech., Ltd.*, 227 AD2d 215, 216 [1st Dept 1996] [dismissing a counterclaim for trade secret misappropriation for lack of evidence of misappropriation]). Here, plaintiff fails to

articulate specific acts of misappropriation (*R.R. Donnelley & Sons Co. v Marino*, 505 F Supp 3d 194, 207 [WDNY 2020] [finding that plaintiff “did not state claims for misappropriation of trade secrets under [the Defend Trade Secrets Act] or New York law”]. Plaintiff’s allegations that Myers has “improperly disclosed” plaintiff’s trade secrets and defendants “misused” plaintiff’s trade secrets are conclusory (Compl ¶¶, 91, 116) in that “the typical questions of who, what, when, where, why, and how have not been answered in any manner, shape, or form” by these allegations (*Interfysio, LLC v Catherine May Co-damm*, 2006 N.Y. Slip Op. 30728[U] [Sup Ct, New York County 2006]).

Therefore, plaintiff’s first and second causes of action on its claims for trade secrets misappropriation are dismissed against all defendants.

*Breach of Contract Claim Against the Chef Defendants (3rd Cause of Action)*

Defendants move to dismiss the breach of contract claim against the Chef defendants. The existence of a contract is an essential element for breach of contract claims (*Harris*, 79 AD3d at 426). Since plaintiff did not allege any contracts, oral or written, or offer and acceptance, or performance, between plaintiff and the Chef defendants, plaintiff fails to state a claim for breach of contract against the Chef defendants. The third cause of action for breach of contract is dismissed as against the Chef defendants.

*Conversion Claim (6th Cause of Action)*

To establish a claim for conversion, a plaintiff “must demonstrate that the defendant exercised unauthorized dominion over [plaintiff’s] property *to the exclusion of the plaintiff’s rights*” (*NY Medscan, LLC v JC-Duggan Inc.*, 40 AD3d 536, 537 [1st Dept 2007]).

Defendants argue, and the court agrees, that plaintiff fails to demonstrate a viable claim for conversion. Nothing in the Complaint suggests that defendants are in possession or otherwise exercised unauthorized control over plaintiff’s trade secrets to the exclusion of plaintiff. As such, the sixth cause of action for conversion is dismissed.

*Co-liability based on Civil Conspiracy*

Plaintiff appears to allege a claim for civil conspiracy to cover all the causes of action and particularly to induce breach of contract (Compl., ¶¶ 164-167). Even in this context, plaintiff’s attempt to establish the Chef defendants’ co-liability is unavailing because “[a]part from conclusory statements about a malicious conspiracy, there are no allegations which could support a contention that defendants actively participated in persuading [a third party] to breach his agreement with plaintiffs” (*Nemenyi v Raymond Intern., Inc.*, 22 AD2d 657 [1st

Dept 1964]; *Senrow Concessions, Inc. v Shelton Properties, Inc.*, 10 NY2d 320, 326 [1961] [defendants cannot be held as co-conspirators to breach a contract as plaintiff's affidavit "does not state any facts supporting this contention; it only contains conclusions"]; *cf. Cohen Bros. Realty Corp. v Mapes*, 181 AD3d 401, 404 [1st Dept 2020] [plaintiff adequately pleaded the required elements of civil conspiracy]).

Here, plaintiff alleges no particular acts of the Chef defendants in inducing and persuading Myers to breach the terms in the Offer Letter. The Complaint contains only speculations that "Chef specifically discussed the existence of and the terms of the Offer Letter and [Company Policy] with Myers while interviewing her" and hired Myers for "the financial benefit of Myers' disclosure of [t]rade [s]ecrets" (Compl ¶¶ 82, 83, 162-168). But, plaintiff's email to Kamali on October 5, 2022 contradicts plaintiff's allegation that Kamali intentionally participated in a conspiracy, as the email showed that plaintiff anticipated Myers' actions in breach of their contract was "being performed without [Kamali's] knowledge or at least without [Kamali's] knowledge of the violation of the restrictive covenants in their contracts" (NYSCEF # 4).

Plaintiff posits that Myers and the Chef defendants came to a [Civil Conspiracy] agreement<sup>4</sup> in the summer of 2022. Defendants point out that since Myers left plaintiff's employment in June 2022, Myers could not have "squirrel[ed] away" plaintiff's trade secrets or gotten sensitive business information "from those to whom she reported" at plaintiff (NYSCEF # 36 at 11 quoting Compl., ¶163). Defendants' highlight of the timing for this conspiracy deflects the hollowness of plaintiff's allegations for this conspiracy theory to cover all the causes of action. Plaintiff's claim under the Civil Conspiracy theory is dismissed.

#### *Kamali's Liability in his Individual Capacity*

Defendants move to dismiss all causes of action in the Complaint against Kamali, Chef's Chief Executive Officer, as plaintiff has no claims against Kamali in his individual capacity (NYSCEF # 36 at 11-13). Defendants' motion is granted.

Plaintiff's claims are based on Myers and Chef's allegedly wrongful conducts. Despite this, plaintiff asserts all claims against Kamali in addition to Myers and Chef, relying on several co-liability theories, such as civil conspiracy, piercing the corporate veil, agency theory, and alter-ego theory (Compl ¶¶ 30-35, 142, 143, 161-68). None of these claims under the co-liability theories can survive dismissal because plaintiff has not alleged any facts that would support a claim under these theories (*see e.g. E. Hampton Union Free School Dist. v Sandpebble Builders, Inc.*, 16 NY3d 775, 776 [2011] [dismissing the piercing the corporate veil claim because

<sup>4</sup> "When used in [the Civil Conspiracy] section of the . . . Complaint, "Agreement" refers to this agreement to enter into a civil conspiracy." (Compl ¶ 163).

“plaintiff failed to allege any facts indicating that [the individual defendant] engaged in acts amounting to an abuse or perversion of the corporate form”).

CONCLUSION

In view of the above, it is

ORDERED that plaintiff The Restaurant Zone LLC’s motion for a preliminary injunction (MS 001) is denied; and it is further

ORDERED that defendants Karen Myers, Stevens & Company LLC, and Steve Kamali’s motion to dismiss the first, second, third – as against Stevens & Co. LLC and Steve Kamali – and sixth causes of action, the civil conspiracy claim, as well as their motion to dismiss the complaint as against Steven Kamali, in his individual capacity, is granted; and it is further

ORDERED that the parties shall meet and confer in preparation of a preliminary discovery order for discussion, in needed, at a conference to be held via Microsoft Teams on August 23, 2023, at 3:00 p.m. or at such other time that the parties shall set with the court’s law clerks.

This constitutes the Decision and Order of the court.

08/04/2023  
DATE

  
MARGARET A. CHAN, J.S.C.

CHECK ONE:	<input type="checkbox"/> CASE DISPOSED	<input checked="" type="checkbox"/> NON-FINAL DISPOSITION
	<input type="checkbox"/> GRANTED <input type="checkbox"/> DENIED	<input type="checkbox"/> GRANTED IN PART <input checked="" type="checkbox"/> OTHER
APPLICATION:	<input type="checkbox"/> SETTLE ORDER	<input type="checkbox"/> SUBMIT ORDER
CHECK IF APPROPRIATE:	<input type="checkbox"/> INCLUDES TRANSFER/REASSIGN	<input type="checkbox"/> FIDUCIARY APPOINTMENT <input type="checkbox"/> REFERENCE