

Empire Watch Mfg., LTD v Elite Group Intl. NY, Inc

2026 NY Slip Op 30606(U)

February 18, 2026

Supreme Court, New York County

Docket Number: Index No. 650233/2025

Judge: Phaedra F. Perry-Bond

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SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY

PRESENT: HON. PHAEDRA F. PERRY-BOND PART 35

Justice

-----X

EMPIRE WATCH MANUFACTURING, LTD,
Plaintiff,

- v -

ELITE GROUP INTERNATIONAL NY, INC,
Defendant.

INDEX NO. 650233/2025

04/16/2025,
11/07/2025,
11/07/2025

MOTION DATE

MOTION SEQ. NO. 001 002 003

DECISION + ORDER ON MOTION

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ELITE GROUP INTERNATIONAL NY, INC
Plaintiff,

-against-

ROBERT ELIZONDO, THE FACET COLLECTIVE INC.
Defendant.

Third-Party
Index No. 595448/2025

-----X

The following e-filed documents, listed by NYSCEF document number (Motion 001) 15, 16, 17, 18, 19, 20, 22, 24

were read on this motion to/for DISMISS

The following e-filed documents, listed by NYSCEF document number (Motion 002) 32, 33, 34, 35, 43, 46, 48

were read on this motion to/for DISMISSAL

The following e-filed documents, listed by NYSCEF document number (Motion 003) 36, 37, 38, 39, 40, 41, 42, 44, 45

were read on this motion to/for DISMISSAL

Upon the foregoing documents, motion sequences 001 through 003 are consolidated for disposition and decided as follows:

- A. Plaintiff Empire Watch Manufacturing, LTD's ("Plaintiff" or "Empire") motion ("Mot. Seq. 001") to dismiss Defendant Elite Group International NY, Inc.'s ("Defendant" or "Elite") counterclaims is granted in part.

B. Third-Party Defendant Robert Elizondo's ("Elizondo") motion to dismiss (Mot. Seq. 002) the first through fifth causes of action in the Third-Party Complaint is granted in part.

C. Third-Party Defendant The Facet Collective Inc.'s ("Facet Collective") motion to dismiss ("Mot. Seq. 003") Elite's Third-Party Complaint pursuant to CPLR 3211(a)(8) is denied without prejudice and with leave to renew after jurisdictional discovery.¹

I. Background

As alleged in the pleadings, Elite provides products, including watches, to customers around the world, including QVC UK ("QVC"), a British television shopping channel. On June 22, 2023, QVC allegedly notified Elite that watches provided by Empire had "serious issues" and needed to be recalled. Allegedly, the watches violated the European Union's safety standards because the watches released violative levels of nickel, released copper in a level that caused discoloration around the wearers' wrists, and contained lead and chromium. QVC retained attorneys and sent a demand letter to Elite on October 4, 2023, seeking indemnification for losses suffered because of the defective watch or threatening litigation. As a result, on November 4, 2024, Elite was allegedly forced into a settlement agreement with QVC to settle losses related to the defects in Empire's watches.

Elite further alleges that Third-Party Defendant Elizondo, Elite's former Vice President of the watch division, conspired with Empire to create a competitor to Elite – Third-Party Defendant Facet Collective. Allegedly, Elizondo breached confidentiality and non-compete provisions of his employment contract by working with Empire to create Facet Collective. According to Elite, Facet

¹ Although counsel for Third-Party Defendants ask the Court to disregard the opposition papers based on the assertion that they were late, the Court denies this request. Public policy favors resolving cases on the merits rather than technicalities. Moreover, the papers were technically timely pursuant to CPLR 2214(b) as they were due two days prior to the return date, which was a Sunday, meaning the papers filed the following Monday were timely.

Collective was formed on February 16, 2024, one day after Elizondo severed employment with Elite, and is owned and operated by Elizondo and his wife.²

Meanwhile, in April of 2024, Empire and Elite agreed to further sales of watches and accessories from Empire to Elite. Allegedly, Elite paid invoices for the merchandise delivered periodically, but by July 22, 2024, Elite left unpaid six invoices in the amount of \$209,503.50. Elite allegedly acknowledged the debt and promised to pay it but after receiving a demand letter, Elite threatened to withhold payment unless Empire reimbursed Elite for losses related to the 2023 claim from QVC. Empire alleges Elite induced Empire to keep sending merchandise in 2024 with the intent to withhold payment for the 2024 shipments as a means of recouping alleged losses related the 2023 QVC claim. As a result, Empire sued Elite alleging breach of contract, account stated, fraud, and *quantum valebant*. Elite responded with counterclaims alleging breach of contract, promissory estoppel, breach of the implied covenant of good faith and fair dealing, tortious interference with business relations and conspiracy to commit tortious interference with business relations.

Elite also filed a Third-Party Complaint against Elizondo and Facet Collective. Elite sues Elizondo for breach of fiduciary duty, tortious interference with business relations, conspiracy to commit tortious interference with business relations, tortious interference with prospective contractual relations, and breach of contract. Facet Collective is sued for conspiracy to commit tortious interference with business relations and tortious interference with prospective contractual relations. Empire, Elizondo, and Facet Collective each respond with a pre-answer motion to dismiss. The motions are consolidated for disposition and decided in accordance with the reasons that follow.

² Elizondo allegedly continued working as a consultant for Elite until July 2024.

II. Discussion

A. Empire's Motion to Dismiss (Mot. Seq. 001)

Empire's motion to dismiss is granted in part and denied in part. When reviewing a pre-answer motion to dismiss for failure to state a claim, the Court must give Plaintiff the benefit of all favorable inferences which may be drawn from the pleadings and determine only whether the alleged facts fit within any cognizable legal theory (*Sassi v Mobile Life Support Services, Inc.*, 37 NY3d 236, 239 [2021]). A motion to dismiss pursuant to CPLR 3211(a)(1) is appropriately granted only when the documentary evidence utterly refutes the plaintiff's factual allegations (*Goshen v Mutual Life Ins. Co. of New York*, 98 NY2d 314 [2002]). The documentary evidence must be unambiguous, of undisputed authenticity, and its contents must be undeniable (*VXI Lux Holdco S.A.R.L. v SIC Holdings, LLC*, 171 AD3d 189, 193 [1st Dept 2019]).

The motion to dismiss the breach of contract counterclaim is denied. Empire argues documentary evidence in the form of certain inspections conducted by the European Union establishes definitively that its watches were not defective. However, those inspection reports are insufficient. Besides being unauthenticated, the reports do not establish conclusively that the watches in those reports are the same allegedly defective watches that are the subject of the counterclaims. Discovery is needed to clear up this issue of fact.

The motion to dismiss the promissory estoppel claim is likewise denied. Empire argues this claim is duplicative of the breach of contract cause of action, but at this pre-discovery stage, where the contract breached is allegedly oral, Elite is entitled to plead promissory estoppel in the alternative (*see Tahari v Narkis*, 216 AD3d 557, 559 [1st Dept 2023] citing *Kramer v Greene*, 142 AD3d 438, 441-442 [1st Dept 2016]). However, the breach of the implied covenant of good faith & fair dealing claim is dismissed as duplicative of the breach of contract cause of action. The claim

for breach of the implied covenant of good faith and fair dealing is “premised on the same conduct that underlies the breach of contract cause of action and is intrinsically tied to the damages allegedly resulting from a breach of contract” (*see SolidX Management LLC v Vaneck Securities Corp.*, 230 AD3d 1020, 1021 [1st Dept 2024] quoting *Parlux Fragrances, LLC v S. Carter Enters., LLC*, 204 AD3d 72, 92 [1st Dept 2022]).

The cause of action alleging conspiracy to commit tortious interference with business relations is dismissed because civil conspiracy is not an independent cause of action in New York (*Steier v Schreiber*, 25 AD3d 519, 522 [1st Dept 2006]). However, for purposes of a pre-answer motion to dismiss, Elite adequately alleged tortious interference with business relations. To allege tortious interference with business relations, a party must allege the existence of a business relationship with a third party, defendant’s interference with those relationships, that defendant acted out of malice or by using unlawful means, and resulting injury to the business relationship (*see, e.g. Amaranth LLC v J.P. Morgan Chase & Co.*, 71 AD3d 40, 48 [1st Dept 2009]). The “unlawful” element requires a showing of criminal or tortious behavior, including acts of fraud or misrepresentations (*see Carvel Corp. v Noonan*, 3 NY3d 182 [2004]).

Elite alleges in its counterclaims and Third-Party Complaint that Empire worked with Elizondo to utilize Elite’s confidential and proprietary customer information to create a competitor, Facet Collective, to harm Elite. While acting out of economic self-interest is not unlawful conduct for purposes of a tortious interference claim, Elite’s breach of fiduciary duty claim asserted against Elizondo serves as the predicate tortious conduct for purposes of alleging a tortious interference with business relations claim. As this is a pre-answer motion to dismiss where the factual allegations are accepted as true and Elite is given all favorable inferences which may be drawn from the pleadings, the tortious interference with business relations claim is sustained. If

information gained during discovery flatly contradicts Elite's allegations, then Empire may move for summary judgment.

B. Elizondo's Motion (Mot. Seq. 002)

Elizondo's motion is granted in part and denied in part. Given the procedural posture, and considering Elizondo contests the validity of Elite's breach of contract claims, the motion to dismiss the breach of fiduciary duty claim as duplicative is denied. Moreover, although Elizondo was employed by Elite for seven years, the employment contract only governed one of those years, which raises a fact issue as to whether any of Elizondo's acts which constituted an alleged breach of fiduciary duty fall outside the contract term.

Further, while alleged conduct may result in a breach of a contractual obligation, it may also constitute a breach of fiduciary duty which exists independently and separate from a contractual obligation, which would render the breach of fiduciary claim non-duplicative (*see, e.g. Bullmore v Ernst & Young Cayman Islands*, 45 AD3d 461, 463 [1st Dept 2007]). The fiduciary duties Elizondo allegedly owed Elite while serving as the Vice President of the Watch Division, which included the duty to not share confidential and proprietary trade information (*see Gibbs v Breed, Abbott & Morgan*, 271 AD2d 180, 186 [1st Dept 2000]) and the duty to exercise good faith and loyalty in the performance of his role (*Young Adult Institute, Inc. v Corporate Source, Inc.*, 236 AD3d 483, 484 [1st Dept 2025]) exist independently from duties arising from the employment contract (*see also Continental Industries Group, Inc. v Ustuntas*, 211 AD3d 601, 602 [1st Dept 2022; *Maritime Fish Products, Inc. v World-Wide Fish Products, Inc.*, 100 AD2d 81 [1st Dept 1984]).

Elizondo's argument that he is protected by the business judgment rule from damages Empire is seeking from Elite based on allegedly fraudulent statements and material omissions for

which Elizondo was allegedly responsible to communicate is unavailing on this pre-answer motion to dismiss (*Peguero v 601 Realty Corp.*, 58 AD3d 556, 558 [1st Dept 2009]). “The ‘commission of a tort’ doctrine permits personal liability to be imposed on a corporate officer for misfeasance or malfeasance, i.e., an affirmative tortious act; personal liability cannot be imposed on a corporate officer for nonfeasance, i.e., a failure to act” (*id.* at 559). As this is a pre-answer motion to dismiss and Elizondo has failed to definitively prove that his affirmative acts, including his alleged breach of fiduciary duties, did not play any part in the alleged damages Empire now seeks from Elite, the motion to dismiss the breach of fiduciary duty claim is denied (*see also Miami Firefighters’ Relief & Pension Fund v Icahn*, 199 AD3d 524 [1st Dept 2021] [use of confidential information to engage in self-dealing sufficient to sustain breach of fiduciary duty claim]).

The motion to dismiss the tortious interference with business relations and prospective business relations claims is denied. The underlying breach of fiduciary duty claim asserted against Elizondo constitutes a predicate independent and tortious wrong upon which the tortious interference claims rely (*Amaranth LLC v J.P. Morgan Chase & Co.*, 71 AD3d 40, 47-48 [1st Dept 2009]; *Don Buchwald & Associates, Inc. v Marber-Rich*, 11 AD3d 277 [1st Dept 2004]). The allegations that the claims are pled in conclusory fashion are without merit and fail to consider holistically Elite’s pleadings. Elite’s allegations that Elizondo breached his fiduciary duty and used confidential and proprietary trade secrets to interfere with Elite’s business relationships with SundanceLiving.com and HSN, Inc. are sufficient at this pre-answer and pre-discovery juncture. However, the conspiracy to commit tortious interference claim is dismissed (*Steier v Schreiber*, 25 AD3d 519, 522 [1st Dept 2006]).

The breach of contract claim is not preempted by the federal Copyright Act because there are no allegations that Elizondo is infringing on any of Elite’s copyrights or trademarks. Rather,

what is alleged is that Elizondo used information he was privy to while working at Elite, including pricing, customer lists, and other business practices, to elicit Elite's customers towards his own business, Facet Collective, which was coincidentally formed the day after Elizondo terminated his employment relationship with Elite. Whether Elizondo's acts actually breached the terms of his employment contract, or the implied covenant of good faith and fair dealing is a fact issue which requires discovery and cannot be resolved on a pre-answer motion to dismiss.³

C. Facet Collective's Motion to Dismiss (Mot. Seq. 003)

Facet Collective's motion to dismiss is denied, without prejudice, and with leave to renew upon limited jurisdictional discovery.⁴ Pursuant to CPLR 302(a)(1), a New York Court may exercise personal jurisdiction over a nondomiciliary if the nondomiciliary has purposefully transacted business within the state and there is "a substantial relationship between the transaction and the claim asserted" (*Coast to Coast Energy, Inc. v Gasarch*, 149 AD3d 485 [1st Dept 2017] quoting *Paterno v Laser Spine Ins.*, 24 NY3d 370, 376 [2014]). A court must engage in a two-prong inquiry to determine (1) whether the defendant transacts any business in New York and, if so, (2) whether the cause of action arises from such a business transaction (*Wilson v Danta*, 128 AD3d 176 [1st Dept 2015]). A plaintiff does not need to have been involved in the transaction; rather, a plaintiff need only demonstrate that, considering all the circumstances, there is an articulable nexus or substantial relationship between the business transaction and the claim asserted (*D & R Global Selections, S.L. v Bodega Olegario Falcon Pineiro*, 29 NY3d 292, 298-299 [2017]; *English v Avon Products, Inc.*, 206 AD3d 404 [1st Dept 2022]).

³ Elizondo did not move to dismiss the sixth cause of action asserted against him which alleges he breached the confidentiality provision of his contract.

⁴ Notably, Facet Collective did not move to dismiss pursuant to CPLR 3211(a)(1) or (a)(7).

A plaintiff bears the ultimate burden of proof on the issue of personal jurisdiction since they are the party seeking to assert it over a defendant. However, courts do not require the plaintiff to make a *prima facie* showing of personal jurisdiction, but only to demonstrate that facts “may exist” to exercise personal jurisdiction over the defendant (*see* CPLR 3211[d]; *American BankNote Corp. v. Daniele*, 45 AD3d 338, 340 [1st Dept 2007]).

Elite, a New York corporation, claims tortious acts were committed against it in New York by Facet Collective, Elizondo, and Empire, who all acted in concert to use Elite’s misappropriated proprietary information to interfere with Elite’s business relations. As this is a pre-answer motion to dismiss, where all facts alleged are accepted as true and Elite is entitled to all favorable inferences which may be drawn from the pleadings, Elite has made a sufficient start to warrant jurisdictional discovery against Facet Collective (*see, e.g. 477 Realty, L.L.C. v Wing Soho, LLC*, 234 AD3d 469, 470-471 [1st Dept 2025]; *see also Venegas v Capric Clinic*, 147 AD3d 457 [1st Dept 2017]). This is especially the case as Facet Collective appears to be a closely held corporation by Elizondo and/or his wife, and Elizondo does not dispute jurisdiction is appropriate over him (*see Highland Crusader Offshore Partners, L.P. v Targeted Delivery Technologies Holdings, Ltd.*, 184 AD3d 116, 124-125 [1st Dept 2020] [jurisdictional discovery appropriate where defendants were closely related and jurisdiction was contested by only some defendants]). Elite alleges that Facet Collective was formed in February of 2024 while Elizondo continued working as a consultant for Elite until July of 2024 – raising an inference, for purposes of a pre-answer motion to dismiss, that Facet Collective was engaged in Elizondo’s allegedly tortious conduct in New York while Elizondo remained privy to Elite’s proprietary and confidential information.

Facet Collective’s assertions regarding ownership and business directed at New York are supported solely by sworn declarations from Elizondo and his wife, which by themselves do not

constitute documentary evidence and cannot be considered on this pre-answer motion to dismiss (*see Bou v Llamaza*, 173 AD3d 575 [1st Dept 2019]). The declarations do not include any documentary evidence substantiating their factual assertions aside from the employment contract which forms the basis of the breach of contract causes of action against Elizondo, which is irrelevant to any analysis of personal jurisdiction over Facet Collective. Given the insufficient record, the motion is denied without prejudice and with leave to renew after jurisdictional discovery.

Accordingly, it is hereby,

ORDERED that Empire's motion (Mot. Seq. 001) to dismiss Elite's counterclaims is granted solely to the extent that the third counterclaim alleging breach of the implied covenant of good faith and fair dealing is dismissed and the fourth counterclaim alleging conspiracy to commit tortious interference with business relations is dismissed, and the remainder of the motion is denied; and it is further

ORDERED that Elizondo's motion (Mot. Seq. 002) to dismiss the Third-Party Complaint is granted solely to the extent that the cause of action alleging conspiracy to commit tortious interference is dismissed and the remainder of the motion is denied; and it is further

ORDERED that Facet Collective's motion (Mot. Seq. 003) to dismiss based on lack of personal jurisdiction is denied, without prejudice, with leave to renew after further jurisdictional discovery, with said jurisdictional discovery to be completed within sixty days of this Decision and Order; and it is further

ORDERED that within twenty days of this Decision and Order, Empire shall serve a reply to Elite's counterclaims and Elizondo shall serve an Answer to the Third-Party Complaint; and it is further

ORDERED that the parties shall immediately meet and confer and submit a proposed preliminary conference order to the Court via e-mail, but in no event shall the proposed preliminary conference order be submitted any later than March 24, 2026; and it is further

ORDERED that if the parties elect to resolve their dispute via the Court’s sponsored ADR program, they shall notify the Court so the appropriate referral order may be issued; and it is further

ORDERED that within ten days of entry, counsel for Elite shall serve a copy of this Decision and Order, with notice of entry, on all parties via NYSCEF.

This constitutes the Decision and Order of the Court.

2/18/26
DATE


HON. PHAEDRA F. PERRY-BOND, J.S.C.

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