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| <b>Tandym Group, LLC v Wright</b>  |
| 2026 NY Slip Op 31780(U)   |
| April 20, 2026   |
| Supreme Court, New York County   |
| Docket Number: Index No. 655838/2023   |
| 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

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TANDYM GROUP, LLC

Plaintiff,

- v -

ALEX WRIGHT,

Defendant.

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INDEX NO. 655838/2023

MOTION DATE 08/06/2025

MOTION SEQ. NO. 002

DECISION + ORDER ON MOTION

The following e-filed documents, listed by NYSCEF document number (Motion 002) 16, 17, 18, 19, 20, 21, 22, 23, 27, 28, 29, 30, 31, 32, 33, 34

were read on this motion to/for DISMISS

Upon the foregoing documents, Defendant's motion to dismiss Plaintiff's Amended Complaint and for costs is granted in part and denied in part. Plaintiff's cross motion to compel discovery is denied without prejudice pending entry of a preliminary conference order.

I. Background

As alleged in the Amended Complaint, Plaintiff provides recruiting, temporary staffing, and workforce management services to a variety of industries. Plaintiff's business operations entail utilizing confidential and propriety information, including information related to financial projections, profit margins, hiring criteria and training techniques, business goals, client relationship histories, and pricing terms, amongst other things. To protect its propriety information, Plaintiff's employes are required to execute written confidentially agreements that prohibit employees from disclosing confidential proprietary information obtained through employment.

Defendant was employed by Plaintiff as a vice president in 2017. Through his employment, he became familiar with Plaintiff's confidential information and trade secrets. As part of his

employment, Defendant executed an agreement containing confidentiality, non-solicitation, and non-competition clauses.<sup>1</sup>

Allegedly, between January and May of 2023, Defendant forwarded dozens of e-mails with confidential information from his business e-mail address to his private e-mail, including lists containing thousands of Plaintiff's clients, training materials, client contacts, client development plans, sample pitch e-mails, budgets, marketing, employment agreements, and leads on prospective clients. On May 31, 2023, Plaintiff instituted a policy prohibiting the forwarding of business information to employees' personal e-mail addresses. Then, between July 5, 2023 to September 11, 2023, Defendant began forwarding dozens of e-mails with his client and company information to and from his business e-mail address, which Plaintiff believes was done to allow him to copy information through his mobile device.

In September of 2023, Defendant resigned from his position with Plaintiff and joined Plaintiff's competitor, Landing Point Consulting LLC. On September 21, 2023, Plaintiff learned Defendant contacted one of Plaintiff's clients, Tory Burch, and tried to solicit them to retain his new employer. Plaintiff now sues Defendant for breach of contract, breach of fiduciary duties, tortious interference with existing and prospective business relations, and misappropriation of confidential information.

Defendant moves to dismiss, arguing the non-solicitation covenant is unenforceable. Defendant also argues that there is no claim for "actual misappropriation" because the allegations are made on "information and belief" and that there are no alleged third-party contracts which Defendant's conduct caused to be breached. In opposition, Plaintiff argues it has sufficiently pleaded its causes of action for purposes of surviving a CPLR 3211(a)(7) motion to dismiss, and

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<sup>1</sup> The signatory on the contract is ExecuSearch Group, LLC, which was allegedly Plaintiff's former name.

that Defendant is trying to short circuit the litigation process to avoid providing discovery. Plaintiff cross moves to compel discovery it alleges Defendant has failed to produce.

## II. Discussion

Defendant's motion to dismiss is granted in part and denied in part.<sup>2</sup> When reviewing a motion to dismiss for failure to state a claim, the Court accepts all factual allegations as true, gives claimant the benefit of all favorable inferences which may be drawn from the pleadings, and determines 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 based on documentary evidence is appropriately granted when the documentary evidence utterly refutes the plaintiff's factual allegations, conclusively establishing a defense as a matter of law (*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]).

Defendant's argument that the terms of the non-solicitation clause are expired and therefore can no longer be enforced are without merit. While perhaps that clause can no longer serve as a basis for injunctive relief, the monetary damages that allegedly flow from Defendant's breach of that non-solicitation clause remain actionable. Whether the non-solicitation clause is wholly or partially unenforceable due to its unreasonableness or overbreadth remains an issue of fact which cannot be determined on this limited record and under the lens of a CPLR 3211(a)(1) and (a)(7) motion (*see, e.g. Perella Weinberg Partners LLC v Kramer*, 230 AD3d 451, 451-452 [1st Dept 2024] [ruling on enforceability of non-solicitation clause at summary judgment stage]).

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<sup>2</sup> The Court declines to convert the instant motion into one for summary judgment pursuant to CPLR 3211(c).

The Court declines to dismiss at this juncture Plaintiff's request for injunctive relief, which is sought not in the wherefore clause. Whether Defendant is in possession of Plaintiff's confidential and proprietary information and is or is about to wrongfully use that information remains an issue of fact which cannot be determined on this motion. Accepting the facts alleged as true, if Defendant wrongfully transferred confidential and proprietary information to his personal e-mail account, and is now using that confidential and proprietary information for his own benefit and to Plaintiff's detriment through employment with Plaintiff's competitor, then Plaintiff may be entitled to injunctive relief.

Defendant's motion to dismiss the breach of contract claim based on the misappropriation of confidential information is denied. Accepting the allegations as true and affording Plaintiff the benefit of all favorable inferences, the allegations that Defendant's forwarded confidential proprietary information to himself shortly before accepting employment at Plaintiff's competitor allows the Court to draw an inference that Defendant used that confidential proprietary information in a way that damaged Plaintiff (*see, e.g. CBS Corp. v Dumsday*, 268 AD2d 350, 352 [1st Dept 2000]). Plaintiff cannot be expected to plead with particularity precisely how they were damaged when Defendant is in sole possession of how, if at all, he used the confidential and proprietary information. This is precisely why discovery is needed (*see also At Last Sportswear, Inc. v Byron*, 226 AD3d 551 [1st Dept 2024]; *Westcom Corp. v Dedicated Private Connections, LLC*, 9 AD3d 331, 332 [1st Dept 2004]). At this juncture, the allegations provide Defendant with sufficient notice of the transactions and claims intended to be proven at trial (*see also Second Source Funding, LLC v Yellowstone Capital, LLC*, 144 AD3d 445, 446 [1st Dept 2016]).

Moreover, under the circumstances alleged, Plaintiff is entitled to allege breach of contract as well as breach of fiduciary duty (*see At Last Sportswear, Inc., supra* at 377). The duty of good

faith and loyalty in the performance of Defendant's role, and the duty to not share confidential and proprietary trade information, exist separately and independently of Defendant's contractual obligations (*see Young Adult Ins., Inc. v Corporate Source, Inc.*, 236 AD3d 483 [1st Dept 2025]; *Continental Industries Group, Inc. v Ustuntas*, 211 AD3d 601, 602 [1st Dept 2022]). Defendant's assertion that Plaintiff has not adequately alleged damages is insufficient. Whether Plaintiff can tie Defendant's acts to non-speculative damages is an issue of fact which cannot be resolved on a CPLR 3211(a)(1) or (a)(7) motion and requires further discovery, including discovery from Defendant regarding what he did with the allegedly proprietary and confidential information he e-mailed to himself.

The motion to dismiss the tortious interference with prospective business relations claim is dismissed. Plaintiff has not identified what specific prospective business relations Defendant interfered with, let alone alleging that those prospective business relations would have entered contracts with Plaintiff but for Defendant's allegedly wrongful conduct (*see, e.g. Algomod Technologies Corp. v Price*, 65 AD3d 974 [1st Dept 2009]; *see also Vigoda v DCA Productions Plus inc.*, 293 AD2d 265 [1st Dept 2002]). The tortious interference with existing business relationships claim is likewise dismissed as Plaintiff fails to identify any specific business relationships with which Defendant tortiously interfered. The motion to dismiss the misappropriation of confidential information claim is granted. The misappropriation of confidential information claim arises from and alleges the same facts as the breach of contract and breach of fiduciary duty claims and is therefore duplicative (*see Indeck Energy Services, Inc. v Merced Capital, L.P.*, 200 AD3d 455, 457 [1st Dept 2021] citing *Linkable Networks, Inc. v Mastercard Inc.*, 184 AD3d 418 [1st Dept 2020]).

Because the Amended Complaint survives, the branch of Defendant’s motion for costs is denied. Plaintiff’s cross motion to compel discovery is denied without prejudice pending a preliminary conference. The Court has considered the remainder of the parties’ contentions and finds them unavailing.

Accordingly, it is hereby,

ORDERED that Defendant’s motion to dismiss is granted solely to the extent that the claims for tortious interference with existing and prospective business relations and misappropriation of confidential information are dismissed, and the remainder of the motion is denied; and it is further

ORDERED that Plaintiff’s cross motion to compel certain discovery is denied, without prejudice, and with leave to renew after entry of a preliminary conference order; and it is further

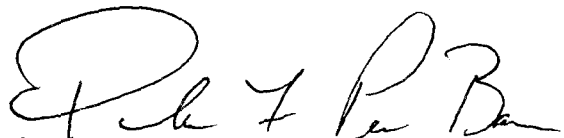
ORDERED that within twenty days of entry, Defendant shall serve its Answer to Plaintiff’s Amended Complaint; and it is further

ORDERED that the parties shall appear for a preliminary conference on May 12, 2026 at 9:30 a.m.; and it is further

ORDERED that within ten days of entry, counsel for Plaintiff 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.

4/20/26  
DATE

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

CHECK ONE:

- CASE DISPOSED
- GRANTED  DENIED
- SETTLE ORDER
- INCLUDES TRANSFER/REASSIGN

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- NON-FINAL DISPOSITION
- GRANTED IN PART  OTHER
- SUBMIT ORDER
- FIDUCIARY APPOINTMENT  REFERENCE

APPLICATION:

CHECK IF APPROPRIATE: