Corporate Transp. Group, Ltd. v Limosys, LLC
2018 NY Slip Op 33282(U)
December 11, 2018
Supreme Court, Kings County
Docket Number: 518824/2017
Judge: Sylvia G. Ash
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At an IAS Term, Comm-11 of the Supreme Court of the State of New York, held in and for the County of Kings, at the Courthouse, at Civic Center, Brooklyn, New York, on the 11th day of December, 2018.

PRESENT:

HON. SYLVIA G. ASH,
Justice.

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CORPORATE TRANSPORTATION GROUP, LTD,

Plaintiff(s),

- against -

LIMOSYS, LLC, LIMOSYS SOFTWARE LLC and ISSAC YEHUDA,

Defendant(s).

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DECISION AND ORDER

Index # 518824/2017

Mot. Seq. 2 & 3

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Plaintiff CORPORATE TRANSPORTATION GROUP, LTD (referred to as Plaintiff or "CTG") moves to amend its complaint to add causes of action for tortious interference with its affiliate contracts, prima facie tort, breach of the implied covenant of good faith and fair dealing and violation of New York General Business Law ("GBL") §340, otherwise known as the Donnelly Act. Defendants, LIMOSYS, LLC and LIMOSYS SOFTWARE LLC (collectively referred to as "Limosys") oppose Plaintiff's motion and cross-move to renew and reargue this Court's Decision and Order dated March 20, 2018, which denied in part and granted in part its motion to dismiss Plaintiff's complaint, and upon renewal and reargument, dismissing Plaintiff's remaining causes of action.

Background

On or around September 29, 2017, Plaintiff commenced this action against Limosys and Limosys's managing member, Isaac Yehuda ("Yehuda"), alleging the following seven causes of action against Defendants: misappropriation of trade secrets, tortious interference with contract,

fraudulent inducement, fraud, tortious interference with prospective business advantage and business relationships, breach of contract and permanent injunction.

Plaintiff is in the business of providing ground transportation to corporate clients and private individuals in the tri-state area and is the largest private provider of MTA Access-A-Ride services. In addition to providing ground transportation services directly, Plaintiff sends customers to other ground transportation companies, which Plaintiff refers to as its "affiliates." Limosys is engaged in providing software to ground transportation service companies in the New York area. Approximately 250 transportation companies use Limosys's software. It is undisputed that Limosys entered into two agreements with Plaintiff, one dated January 27, 2014, entitled "Confidentiality Agreement" (hereinafter referred to as the "2014 Confidentiality Agreement") and another dated August 1, 2016, entitled "Limosys Member's Network Vendor's Agreement" (hereinafter referred to as the "2016 Vendor's Agreement").

Pursuant to the 2014 Confidentiality Agreement, Limosys agreed not to "use, disseminate or in any way disclose any Confidential Information of the Discloser [CTG] to any person, firm, or business...." The term "Confidential Information" is broadly defined as:

> "...any and all technical and non-technical information including application programming interface (API), patent, copyright, trade secret, and proprietary information, techniques, sketches, drawings, models, inventions, know-how, processes, apparatus, equipment, algorithms, software programs, software source documents, and formulae related to the current, future and proposed products and services of the Discloser, and includes, without limitation, information concerning research, experimental work, development, design details and specifications, engineering, financial information, procurement requirements, purchasing, manufacturing, customer lists, business forecasts, sales and merchandising, and marketing plans and information."

The 2016 Vendor's Agreement states that "Limosys owns a proprietary network platform ("Network") that allows car companies ("Members") to share rides between affiliated members as well as Vendors to provide rides to the members." It further provides that the "[s]ervices performed under this Agreement are for Limosys to allow CTG as vendor to have access to its members that are part of the Network."

According to Plaintiff's complaint, Defendants have "hijacked the proprietary and customer information belonging to CTG in order to set up a competing business and steal CTG's customers and business" (Complaint, Paragraph 1). Plaintiff further alleges that, in connection with the parties' agreement, Plaintiff allowed Defendants to access, through an Application Programming Interface,

its trade secrets such as client price structures, affiliate payment structures, and CTG infrastructure. And that Defendants used this information to unfairly compete against it.

Previously, on or about October 23, 2017, Defendants moved to dismiss Plaintiff's complaint on the basis that the parties' actual agreements and related documents refuted Plaintiff's claims. It is Defendants' position that Plaintiff has commenced this lawsuit in bad faith in an effort to wrongfully restrain potential competition and preserve its semi-monopoly on the Transit Authority's Access-A-Ride services.

By Decision and Order dated March 22, 2018, this Court granted Defendants' motion to the extent that all claims against Yehuda, the individual Defendant, were dismissed. Plaintiff's cause of action for tortious interference with prospective business advantage was also dismissed for failure to state a cause of action. The remainder of Defendants' motion to dismiss was denied without prejudice to renew.

Plaintiff's Motion to Amend

Now, Plaintiff moves to amend its complaint to add a claim under New York's antitrust law known as the Donnelly Act, add causes of action for breach of the implied covenant of good faith and fair dealing and prima facie tort, and to expand on its tortious interference with contract claim to include allegations that Limosys interfered with various affiliate contracts.

According to Plaintiff, the proposed amendments are necessitated by Limosys's recent attempts to drive CTG out of the transportation service industry by coercing CTG's affiliates to terminate their contracts with CTG else risk being denied access to Limosys's platform, which the proposed amended complaint alleges is the preeminent dispatch platform in the transportation service industry. Plaintiff contends that at least six "affiliates" have capitulated to Limosys's demands by terminating their contracts with CTG. It is Plaintiff's position that Limosys's conduct amounts to an unlawful restraint on trade in violation of the Donnelly Act and also satisfies the elements for tortious interference with contract and breach of the implied covenant of good faith and fair dealing. In addition, Plaintiff argues that to the extent that the aforementioned conduct was not motivated by a desire to decrease competition and increase revenue, that Limosys was motivated by greed or malice and that such conduct states an action sounding in prima facie tort.

In opposition, Limosys argues that Plaintiff's proposed amendments contradict its original complaint and thus establish the general falsity of Plaintiff's claims. According to Limosys, Plaintiff's allegations of Limosys's anticompetitive conduct are patently false, but even if same were presumed to be true, the alleged anticompetitive conduct has no significant impact on either the market or CTG. Limosys submits that its documentary evidence shows that (1) Limosys has less than

250 car services using its Limosys network but that there are over 900 TLC-licensed for-hire vehicle services; (2) in 2015, CTG had a sizable percentage of Access-A-Ride trips but not the overwhelming share, indicating that the market remains adequately serviced even if Limosys chooses not to deal with CTG; and (3) CTG only used Limosys's network car services for 1% of its Access-A-Ride trips thereby undermining its claim that not having access to Limosys's platform significantly impacts its business or Access-A-Ride users in general.

Limosys further argues that Plaintiff's proposed amendments regarding tortious interference with contract and prima facie tort fail to state a cause of action because these claims require allegations of malice yet, according to Plaintiff's own allegations, Limosys is its competitor which indicates that Limosys is motivated by economic considerations, not malice. Further, Limosys argues that Plaintiff's proposed amendment to add a claim for breach of the implied covenant of good faith and fair dealing should be disallowed because the 2016 Vendor's Agreement contains no restrictions on competition or the use of information despite Plaintiff's attempts to include such restrictions when the parties were negotiating the agreement. And that, as such, Plaintiff cannot attempt to impose restrictions that were never included in the agreement by way of this cause of action.

In reply, Plaintiff contends that it has made out a claim under the Donnelly Act insofar as Plaintiff has pled that Limosys conspired to prevent CTG from doing business with the pool of available affiliate black car services that CTG needs to complete reservations to its customers, including under the Access-a-Ride program, thereby stifling competition in the transportation services industry and causing prices to increase. Plaintiff also argues that its claim for breach of the implied covenant of good faith and fair dealing is not precluded because prohibiting parties from undercutting contracts with third parties necessary to reap the fruits of the subject contract is a term that any reasonable person would understand is included in the subject contract. Lastly, Plaintiff contends that it has properly plead a cause of action for prima facie tort because, contrary to Limosys's argument, there is nothing preventing competitors from acting maliciously towards each other and that, in any case, Plaintiff should be allowed to plead an alternative theory of liability.

Discussion Motion to Amend

It is well established that motions for leave to amend pleadings should be freely granted, in the absence of prejudice or surprise to the opposing party, unless the proposed amendment is palpably insufficient or patently devoid of merit (*Lucido v Mancuso*, 49 AD3d 220, 227 [2d Dept 2008]). The court will not examine the merits of the proposed amendment unless the insufficiency or lack of merit is clear and free from doubt (*Norman v Ferrara*, 107 AD2d 739, 740 [2d Dept 1985]). In cases where the proposed amendment is palpably insufficient as a matter of law or is totally devoid of merit, leave should be denied (*Id.*). Here, Plaintiff's proposed amendments

regarding a Donnelly Act violation and prima facie tort are insufficient as a matter of law and thus, Plaintiff's motion to amend must be denied as to those claims. The remainder of Plaintiff's motion to amend is granted.

New York's antitrust act, the Donnelly Act, states: "Every contract, agreement, arrangement or combination whereby...[a] monopoly in the conduct of any business, trade or commerce or in the furnishing of any service in this state, is or may be established or maintained, or whereby...[c]ompetition or the free exercise of any activity in the conduct of any business, trade or commerce or in the furnishing of any service in this state is or may be restrained...is hereby declared to be against public policy, illegal and void" (GBL § 340[1]). "The principle thrust of antitrust laws is to regulate relations between competitors who, by combining or conspiring, impair competition in the marketplace" (*Matter of Encore College Bookstore, Inc. v City University of New York*, 2008 NY Misc. LEXIS 9889, *23 [Sup Ct, New York Cty 2008]). "The principal wrongs regulated by antitrust laws is price fixing or dividing markets between competitors" (*Id.*). "Courts have recognized the right of a company 'to select a person with whom it does business and to refuse to deal or continue to deal with anyone for reasons sufficient to itself'" (*Lopresti v Massachusetts Mut. Life Ins. Co.*, 5 Misc 3d 1006(A), *3 [Sup Ct, Kings Cty 2004]. "A single concern may choose who it wishes to deal with as long as its decision is not the result of a combination with others to destroy competition so far as the whole relevant product market is concerned" (*Id.*).

"A party asserting a violation of the Donnelly Act is required to (1) identify the relevant product market; (2) describe the nature and effects of the purported conspiracy; (3) allege how the economic impact of that conspiracy is to restrain trade in the market in question; and (4) show a conspiracy or reciprocal relationship between two or more entities...." (*Newsday, Inc. v Fantastic Mind, Inc.*, 237 AD2d 497, 497 [2d Dept 1997]).

In this case, Plaintiff has failed to plead a Donnelly Act violation. Assuming the truth of Plaintiff's allegations that Limosys is using its valuable dispatch platform, specifically access thereto, to coerce at least six of Plaintiff's affiliates to discontinue their relationship with Plaintiff, these allegations do not demonstrate a conspiracy or reciprocal relationship between two or more entities for the purpose of destroying competition in the relevant product market. Secondly, Plaintiff's allegation that Limosys's coercion will result in decreased competition and artificially inflated prices in the transportation services industry is wholly conclusory. There is no allegation regarding how access to Limosys's dispatch platform even impacts the relevant market. Thirdly, to the extent that Limosys's alleged coercive conduct is tortious, Plaintiff has an adequate remedy at law by way of its other causes of action. Thus, Plaintiff's motion to amend its complaint to include a violation of the Donnelly Act must be denied.

With regards to Plaintiff's proposed amendment to include a cause of action for prima facie tort, Plaintiff must plead : (1) the intentional infliction of harm, (2) which results in special damages, (3) without any excuse or justification, (4) by an act or a series of acts which would otherwise be lawful (*see Epifani v Johnson*, 65 AD3d 224, 232 [2d Dept 2009]). To assert a claim for prima facie tort, the plaintiff must allege that disinterested malevolence was the *sole* motivation for the conduct complained of (*Shaw v Club Mgrs. Assn. of Am., Inc.*, 84 AD3d 928, 930 [2d Dept 2011][emphasis added). A mere conclusory statement of malice does not suffice (*see Penn-Ohio Steel Corp. v Allis-Chalmers Mfg. Co.*, 15 Misc. 2d 752, 754 [Sup Ct, New York Cty 1958]). Plaintiffs cannot use prima facie tort as a "catch-all" under which they merely reiterate allegations asserted under several of the previously-asserted causes of action (*Gertler v Goodgold*, 107 AD2d 481, 490 [1st Dept 1985]).

Here, Plaintiff's claim that Limosys was motivated by malice is conclusory and, further, undermined by its other factual allegations asserting that Limosys is motivated by economic self-interest insofar as it is trying to compete with Plaintiff. Accordingly, Plaintiff's motion to amend its complaint to include a cause of action for prima facie tort must be denied.

The remainder of Plaintiff's motion to amend is granted.

Limosys's Motion to Renew and Reargue

Limosys cross-moves to renew and reargue its prior motion to dismiss Plaintiff's complaint for failure to state a cause of action and/or based upon the documentary evidence, and upon renewal and reargument, seeks an order dismissing Plaintiffs' remaining causes of action.

In support of its motion to renew, Limosys states that it has discovered a federal court action involving CTG wherein CTG disclosed the identities of its independent contractor car services as well as its driver compensation without any attempts to seal the record which refutes its claim here that its drivers' identities and compensation are trade secrets and that, accordingly, Plaintiff's cause of action for misappropriation of trade secrets must be dismissed. Limosys also argues that Plaintiff's proposed amended complaint is another basis to renew its motion to dismiss Plaintiff's claim for misappropriation of trade secrets because Plaintiff's new allegation that Limosys's network is so extensive that it is "the predominate platform used by car fleets" undermines its claim that Limosys is making use of CTG's "internal logistical and operational procedures" or the identities of CTG's drivers. Further, Limosys states that, based on the MTA's response to Limosys's FOIL request, Plaintiff's contract with the MTA will be produced which undermines any claim by Plaintiff that its contract with MTA constitutes a trade secret.

Secondly, Limosys states that it has recently discovered MTA's project announcement regarding the e-hail project that Limosys was invited to participate in, which reflects that the project was the first of its kind. Based upon the announcement, Limosys seeks renewal of its motion to dismiss Plaintiff's claim for fraudulent inducement arguing that Limosys could not have misrepresented an intent not to perform services for MTA since the e-hail project did not even exist at the time that Limosys allegedly misrepresented its intention not to compete with Plaintiff.

In addition to renewal, Limosys argues that the Court should grant reargument of its previous motion to dismiss because, although untimely, the Court may nevertheless exercise its discretion and consider the motion since paring down Plaintiff's allegations will promote judicial economy by reducing the number of issues to be litigated. Moreover, if Plaintiff is allowed to amend its complaint, Limosys submits that its motion to reargue would no longer be untimely.

According to Limosys, reargument is warranted because the instant lawsuit is Plaintiff's attempt to restrict competition and maintain its semi-monopoly on the Access-A-Ride business. Limosys argues that a telephone recording of CTG's principal, Eduard Slinin, reveals that CTG is concerned only with safeguarding its $20 million Access-A-Ride account. Moreover, Limosys contends that the parties' agreements, including the prior draft of the 2016 Vendor's Agreement, establishes that the parties never agreed to any confidentiality or non-compete commitment, as alleged herein by Plaintiff, and that Plaintiff's efforts to impose those obligations despite the parties' agreement to exclude them, by way of the instant lawsuit, should be dismissed.

Specifically, Limosys argues that Plaintiff's cause of action for misappropriation of trade secrets is unsustainable because what Plaintiff purports to be "trade secrets" are not, in fact, secret since the information is either public record or has been disclosed by Plaintiff in other lawsuits. Limosys contends that CTG's list of providers or affiliates is public and can be found through the Taxi and Limousine Commission, that CTG's MTA Access-A-Ride contract is subject to FOIL disclosure, and that the identities of CTG's drivers and their compensation was disclosed in a federal class action lawsuit with no attempts to seal the record. Further, that CTG's only other claimed "trade secret," called "internal logistical and operational procedures," is not only vague but untrue since Limosys was never given access to CTG's internal systems, and also meaningless since CTG now alleges that Limosys's software is the "predominate platform used by car fleets."

Secondly, Limosys argues that Plaintiff's claim for tortious interference with the MTA contract should be dismissed because Plaintiff fails to plead what portion of the MTA contract was supposedly breached, and that Plaintiff similarly fails to plead what contract provision was breached with regards to its new proposed amendment alleging tortious interference with its affiliate contracts.

Third, Limosys contends that Plaintiff's breach of contract claim is unsustainable because the 2016 Vendor's Agreement contains a merger clause and therefore supersedes the 2014 Confidentiality Agreement rendering the 2014 Confidentiality Agreement a nullity. Even if the 2014 Confidentiality Agreement was in effect, Limosys contends that said agreement does not contain a restriction on competition. Moreover, that as evidenced by a redline draft of the 2016 Vendor's Agreement, Plaintiff attempted to have restrictive language included in the agreement which would have prohibited Limosys from competing but Plaintiff's proposed restrictions were rejected by Limosys and are thus not reflected in the 2016 Vendor's Agreement.

Lastly, Limosys argues that Plaintiff's claim for unjust enrichment should have been dismissed because it is duplicative of Plaintiff's breach of contract and other tort claims.

In opposition, Plaintiff argues that Limosys has not met the requirements to either renew or reargue its dismissal motion because Limosys fails to provide a reasonable justification for not providing the "new" evidence previously and further fails to point to any matter of fact or law that the Court supposedly overlooked when rendering its decision. Also, Plaintiff contends that Limosys fails to provide good cause why the Court should consider its untimely reargument motion.

In the event the Court considers Limosys's motion, Plaintiff argues that the Court properly denied Limosys's prior motion to dismiss. Plaintiff contends that its claim for misappropriation of trade secrets is sufficiently plead, that its customer list has been cultivated over decades and cannot be easily ascertained by outside sources, and that its misappropriation claim is premised on the fact that Limosys had access to CTG's entire business model, including its customers, affiliates, and its pricing, and that Limosys used this information to compete with CTG despite its express representations that it would not do so. Further, that Limosys aks the Court to believe on a motion to dismiss that Limosys relationship with MTA was "fortuitous," but given that no discovery has taken place, Plaintiff has had no opportunity to delve into the nature, timing and content of these communications and meetings.

Discussion Motion to Renew and Reargue

A motion for leave to renew shall be based upon new facts not offered on the prior motion that would change the prior determination and shall contain reasonable justification for the failure to present such facts on the prior motion (CPLR 2221[e][2], [3]; *Matter of Osorio v Motor Veh. Acc. Indem. Corp.*, 112 AD3d 831, 832 [2d Dept 2013]). "The requirement that a motion for renewal be based on new facts is a flexible one, and it is within the court's discretion to grant renewal upon facts known to the moving party at the time of the original motion if the movant offers a reasonable excuse for the failure to present those facts on the prior motion" (*Id.* at 832-33 [*citations omitted*]).

"Motions for reargument are addressed to the sound discretion of the court which decided the prior motion and may be granted upon a showing that the court overlooked or misapprehended the facts or law or for some other reason mistakenly arrived at its earlier decision"(*Barnett v Smith*, 64 AD3d 669, 670-71 [2d Dept 2009]; *see* CPLR 2221[d]). "[R]egardless of statutory time limits concerning motions to reargue, every court retains continuing jurisdiction to reconsider its prior interlocutory orders during the pendency of the action" (*In re Estate of Burns*, 228 AD2d 674, 675 [2d Dept 1996]).

Here, the Court finds that renewal must be granted. The new factual allegations contained in Plaintiff's amended complaint provide sufficient grounds for renewal as does Limosys's recent discovery of information disclosed by CTG in other litigation that CTG is involved in. The Court also, in its discretion, grants Limosys reargument of its previous motion to dismiss.

Upon renewal and reargument, this Court reverses and finds that Limosys established its entitlement to dismissal of Plaintiff's claims for misappropriation of trade secrets, fraudulent inducement and fraud but adheres to its prior determination with regards to Plaintiff's causes of action for tortious interference with contract and breach of contract. There is no cause of action for unjust enrichment plead in Plaintiff's amended complaint. Thus, Limosys's argument seeking dismissal of said claim is deemed moot.

The Court begins with the principle that the standard for a motion to dismiss is that "the court must determine, accepting as true the factual averments of the complaint and according the plaintiff the benefit of all favorable inferences, whether the plaintiff can succeed upon any reasonable view of the facts as stated" (*Manfro v McGivney*, 11 AD3d 662, 663 [2d Dept 2004][*internal quotations omitted*]). For a plaintiff to survive a motion to dismiss for failure to state a cause of action, the factual allegations in the claim cannot be vague, conclusory or speculative in nature (*see Stoianoff v Gahona*, 248 AD2d 525, 526 [2d Dept1998]; *Residents for More Beautiful Port Washington, Inc. v North Hempstead*, 153 AD2d 727, 729 [2d Dept 1989]).

"To prevail on a claim for misappropriation of trade secrets, a plaintiff must demonstrate: '(1) that it possessed a trade secret, and (2) that the defendants used that trade secret in breach of an agreement, confidential relationship or duty, or as a result of discovery by improper means'" (*Schroeder v Pinterest Inc.*, 133 AD3d 12, 27 [1st Dept 2015]). A trade secret is "any formula, pattern, device or compilation of information which is used in one's business, and which gives him an opportunity to obtain an advantage over competitors who do not know or use it" (*Ashland Mgmt. Inc. v Janien*, 82 NY2d 395, 407-08 [1993]).

"An essential prerequisite to legal protection against the misappropriation of a trade secret is the element of secrecy" (*Tri-Star Light. Corp. v Goldstein*, 151 AD3d 1102, 1106 [2d Dept 2017]). Generally, where customer information is readily ascertainable outside the plaintiff's business, trade secret protection will not attach to such information (*see Leo Silfen, Inc. v Cream*, 29 NY2d 387, 392 [Ct App 1972]). "Conversely, where the customers are not known in the trade or are discoverable only by extraordinary efforts courts have not hesitated to protect customer lists and files as trade secrets"(*Id.*).

Here, Plaintiff seeks trade secret protection for its customer and affiliate list as well as its pricing, but fails to allege what measures Plaintiff has employed to keep said information confidential (*see Precision Concepts, Inc. v Bonsanti*, 569 NYS2d 124, 125-26 [2d Dept 1991]). Moreover, Plaintiff fails to dispute Limosys's assertion that such information is a matter of public record and that Plaintiff has also freely disclosed said information in other litigation. The complaint also fails to explain how Limosys's alleged use of CTG's information provides Limosys an advantage over its competitors that it did not have previously. With regards to Plaintiff's claim that its trade secrets also pertain to its "internal logistical and operational procedures," this claim is too conclusory, especially given the foregoing. Accordingly, Plaintiff's cause of action for misappropriation of trade secrets must be dismissed.

Having found that Plaintiff has inadequately plead the existence of any trade secrets, it is clear that Plaintiff's causes of action for fraudulent inducement and fraud fail to state a cause of action. "To allege a cause of action based on fraud, plaintiff must assert 'a misrepresentation or a material omission of fact which was false and known to be false by defendant, made for the purpose of inducing the other party to rely upon it, justifiable reliance of the other party on the misrepresentation or material omission, and injury'" (*Connaughton v Chipotle Mexican Grill, Inc.*, 29 NY3d 137, 142 [Ct App 2017]). "The true measure of damage is indemnity for the actual pecuniary loss sustained as the direct result of the wrong or what is known as the 'out-of-pocket' rule (*Lama Holding Co. v Smith Barney Inc.*, 88 NY2d 413, 421 [Ct App 1996][*citations omitted*]). "Under this rule, the loss is computed by ascertaining the difference between the value of the bargain which a plaintiff was induced by fraud to make and the amount or value of the consideration exacted as the price of the bargain" (*Id.*). "If the fraud causes no loss, then the plaintiff has suffered no damages" (*Sager v Friedman*, 270 NY 472, 481 [Ct App 1936]).

Here, Plaintiff alleges that Yehuda, on behalf of Limosys, represented that Limosys would not perform the same services or similar to those described in the 2016 Vendor's Agreement for any business entities involved in the business of CTG. Plaintiff further alleges this representation was of "material importance to CTG who would not otherwise have agreed to provide Limosys access to CTG's confidential and proprietary information and trade secrets, including its customer and

Affiliates lists" and that "CTG relied on this representation when making its decision to enter into the Limosys Agreement."

According to Plaintiff's allegations, the direct result of Limosys's misrepresentation is the fact that CTG entered into the 2016 Vendor's Agreement with Limosys. But Plaintiff does not allege that it has suffered any pecuniary loss as a result of having entered into said agreement. In fact, there is nothing in the record to indicate anything other than a financial gain (for both sides) as a direct result of the 2016 Vendor's Agreement. The only "loss" alleged by Plaintiff is that Limosys had access to its trade secrets as a result of the parties' relationship and used such information to compete with it. However, even if true, loss profits are not recoverable under a fraud theory (*see MTI/The Image Group, Inc. v Fox Studios East, Inc.*, 262 AD2d 20, 22 [1st Dept 1999]) and, in any case, Plaintiff has failed to sufficiently allege the existence of any trade secrets. Plaintiff's causes of action for fraud and fraudulent inducement must therefore be dismissed.

With regards to Plaintiff's claims sounding in breach of contract and tortious interference with contract, said claims are sufficiently plead in Plaintiff's amended complaint. Limosys's arguments for dismissal are more appropriate at the summary judgment stage.

Conclusion

For the reasons set forth above, it is hereby

ORDERED that Plaintiff's motion to amend its complaint is granted to the extent granted herein but otherwise denied; and it is further

ORDERED that Limosys's motion to renew and reargue this Court's Decision dated March 20, 2018 is granted and, upon renewal and reargument, the Court hereby grants Limosys's motion to dismiss to the extent that Plaintiff's causes of action for misappropriation of trade secrets, fraud and fraudulent inducement are dismissed but that Limosys's motion to dismiss is otherwise denied.

This constitutes the Decision and Order of the Court.

E N T E R,

Sylvia G. Ash, J.S.C.