Weil v Stenzler
2019 NY Slip Op 30966(U)
April 5, 2019
Supreme Court, New York County
Docket Number: 652661/2018
Judge: Andrea Masley
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SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK: COMMERCIAL PART 48

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JUSTIN WEIL, ELAN DANON,

Plaintiffs,

- v -

ANDREW STENZLER, RUMBLE FITNESS LLC,

Defendants.

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INDEX NO. 652661/2018

MOTION DATE 06/08/2018

MOTION SEQ. NO. 001

DECISION AND ORDER

MASLEY, J.:

The following e-filed documents, listed by NYSCEF document number (Motion 001) 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12
were read on this motion to/for DISMISS.

Plaintiffs Justin Weil and Elan Danon, individuals with “extensive experience in public and private equity and investment markets as analysts and/or portfolio managers,” commenced this action against individual defendant Andrew Stenzler, founder of entity defendant Rumble Fitness LLC (Rumble) which is a company in the business of group boxing/exercise studios that first opened around 2016 (NYSCEF Doc. No. [Doc] 4 [complaint, filed 5/29/19]).

Defendants now move, pursuant to CPLR 3211 (a) (7), to dismiss the complaint.

Background

The facts are taken from plaintiffs' May 29, 2019 complaint. Plaintiffs have been friends and fitness enthusiasts for many years. After significant time and research–including speaking to specialists, friends, and colleagues, and researching models for marketing purposes–plaintiffs developed a plan to incorporate contemporary exercise trends–i.e., studios that offer only group classes, such as SoulCycle–and created "proprietary business plans and ideas regarding the specific type and nature of the classes they wished to develop" (*id.* ¶¶ 7-28). Ultimately, plaintiffs "distilled" their research into a "community" exercise concept, as well as "proprietary information," into a series of programs focused on boxing exercise (*id.* ¶ 30).

Specifically, plaintiffs planned to use a teardrop-shaped boxing bag filled with water or other liquid to reduce injury without sacrificing effectiveness or tactile response; "use of these teardrop bags would be the hallmark of the Spar boxing experience" plaintiffs developed (*id.* ¶¶ 31-32). Plaintiffs also created proprietary information such as "integrating an area next to the bags to perform light weight training, combined with calisthenics"; "exercise routines . . . set to a playlist of music to generate the energy needed for the class"; and "[t]he room would also be dimly lit to set the ambiance which they wanted to create" (*id.* ¶ 33).

Plaintiffs "developed some of their ideas and concepts into a business plan and in 2015 began to actively market their ideas under confidentiality agreements" (*id.* ¶ 36). In December 2015, Weil told Stenzler "generally about [plaintiffs'] ideas for a new exercise business," "Spar" (*id.* ¶ 39). The following month, plaintiffs gave Stenzler "a detailed presentation of the Spar exercise concept" "[u]nder an agreement of confidentiality" (*id.* ¶ 40).

Stenzler indicated that he had investors and contacts that would help "ensure that Spar was a success," and, "under the guise that Stenzler would be very closely involved in Spar, [plaintiffs] started sharing" proprietary information and concepts, including the teardrop bag, with Stenzler (*id.* ¶¶ 41-42). Plaintiffs "were open to giving Stenzler a significant equity stake in Spar, . . . contingent on execution of a full operational and marketing plan (including all potential hires)" and non-dilutive as to plaintiffs' stake in Spar; plaintiffs did not "agree to give up operational, day-to-day control of Spar . . . creative control of Spar to Stenzler or any other third party" (*id.* ¶ 47).

In February 2016, Stenzler suggested they name the prospective company "Rumble" but plaintiffs "did not commit"; on March 1, 2016, Stenzler's wife filed a trademark application for "RMBL," and the mark was filed in the USPTO on August 12, 2016; meanwhile, plaintiffs and Stenzler continued to have "[a]ctive communications" about Spar from February to early April 2016 (*id.* ¶¶ 49-52). On April 26, 2016, Stenzler announced on Facebook that he and three partners, not including plaintiffs, would open a group exercise business called "Rumble" (*id.* ¶ 53). Stenzler's Rumble business "incorporated almost every material detail regarding business and operations that [plaintiffs'] shared with Stenzler" during their four months of meetings, and the Rumble logo and "primary exercise feature" is the teardrop bag (*id.* ¶¶ 54-55). Plaintiffs "expressed their shock and extreme disappointment," but Stenzler "feigned ignorance and claimed that the ideas where either his own or already in the public realm"; nevertheless, Stenzler offered plaintiffs a dilutable 1% ownership stake in Rumble, which they rejected (*id.* ¶ 57). Plaintiffs ceased communications with Stenzler after June 2016, but "[o]ut of respect for the continued friendship" of Weil's and Stenzler's daughters, plaintiffs "elected not to immediately pursue claims" (*id.* ¶¶ 58-59).

Rumble has since achieved significant value, endorsements, and partnerships based on business concepts and operations "almost entirely based on" plaintiffs' "proprietary ideas, concepts and information" (*id.* ¶¶ 60-62).

Plaintiffs' complaint raises the following causes of action: (1) unfair competition and misappropriation of confidential information and trade secrets against all defendants (*id.* ¶¶ 63-77); (2) breach of fiduciary duty against Stenzler (*id.* ¶¶ 78-91); (3) idea misappropriation against all defendants (*id.* ¶¶ 92-99); and, alternatively, (4) unjust enrichment (*id.* ¶¶ 100-104). Plaintiffs seek a declaration regarding their lawful proprietary ownership of certain intellectual property; damages not less than $28 million; royalty payments for Rumble's continued use of proprietary information; and fees/expenses (*id.* at 19).

Defendants now move to dismiss the complaint under CPLR 3211 (a) (7).

Discussion

"On a motion to dismiss pursuant to CPLR 3211, the pleading is to be afforded a liberal construction. [The court] accept[s] the facts as alleged in the complaint as true, [and] accord[s] plaintiff[] the benefit of every possible favorable inference" (*Leon v Martinez*, 84 NY2d 83, 87-88 [1994] [citation omitted]). However, bare legal conclusions and "factual claims which are . . . inherently incredible" are not "accorded their most favorable intendment" (*Summit Solomon & Feldesman v Lacher*, 212 AD2d 487, 487 [1st Dept 1995]).

1. Unfair competition and misappropriation of confidential information and trade secrets as to both defendants

Defendants contend that the unfair competition/misappropriation claim must be dismissed as plaintiffs have not alleged the existence of any information that qualifies for protection under an unfair competition claim. Plaintiffs respond that the claim is adequately alleged as the complaint asserts a bad faith misappropriation of commercial advantage by defendants' exploitation of plaintiffs' proprietary information and trade secrets.

Under New York law, "the primary concern in unfair competition is the protection of a business from another's misappropriation of the business' organization [or its] expenditure of labor, skill, and money" (*Macy's Inc. v Martha Stewart Living Omnimedia, Inc.*, 127 AD3d 48, 56 [1st Dept 2015] [internal quotation marks omitted] [alteration in original], quoting *Ruder & Finn Inc. v Seaboard Sur. Co.*, 52 NY2d 663, 671 [1981]). " 'The principle of misappropriation of another's commercial advantage [is] a cornerstone of the tort' " (*id.*, quoting *Ruder & Finn Inc.*, 52 NY2d at 671). "A cause of action based on unfair competition may be predicated upon . . . the alleged bad faith misappropriation of a commercial advantage belonging to another by exploitation of proprietary information or trade secrets" (*Out of Box Promotions, LLC v Koschitzki*, 55 AD3d 575, 578 [2d Dept 2008] [internal quotation marks omitted], quoting *Beverage Mktg. USA, Inc. v South Beach Beverage Co., Inc.*, 20 AD3d 439, 440 [2d Dept 2005]; *see also Macy's Inc.*, 127 AD3d at 56).

To state an unfair competition claim for misappropriation of trade secrets, plaintiffs must allege that (1) they possessed a trade secret and (2) "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] [internal quotation marks omitted]).

"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" (*id.* [internal quotation marks omitted]; *see* Restatement of Torts § 757, comment b). "Under New York law, 'a trade secret can exist in a combination of characteristics and components, each of which, by itself, is in the public domain, but the unified process, design and operation of which, in unique combination, affords a competitive advantage' " (*Norbrook Labs. Ltd. v G.C. Hanford Mfg. Co.*, 5:03CV165(HGM/GLS), 2003 WL 1956214, at *3, 2003 US Dist LEXIS 6851, at *11 [NDNY Apr. 24, 2003], quoting *Integrated Cash Mgmt. Servs., Inc. v Digital Transactions, Inc.*, 920 F2d 171, 174 [2d Cir 1990]). The secrecy of certain information is, in some circumstances, an issue of fact that cannot be resolved on a motion to dismiss (*see Medtech Products Inc. v Ranir, LLC*, 596 F Supp 2d 778, 789 [SDNY 2008]).

Accepting the allegations in the complaint as true, plaintiffs adequately allege that Stenzler misappropriated their trade secrets/proprietary business information through their meetings, entered a confidentiality agreement of some form, and violated that agreement by using the trade secrets/proprietary information to form Rumble, with other business partners, using virtually all of the material aspects of the information gleaned from plaintiffs. At this early stage, on a motion to dismiss under only CPLR 3211 (a) (7), it is not for the court to decide whether the information is novel or comprises trade secrets/proprietary information.

As to Rumble, discovery is needed to determine the manner in which it obtained and used the allegedly misappropriated information.

While defendants further contend that plaintiffs have failed to allege any legally cognizable damages that resulted from the purported misappropriation, the court declines to grant the motion on that basis at this pre-answer stage. Although plaintiffs' damages "must be measured by the loss of the[ir own] commercial advantage, which may not correspond to what the defendant has wrongfully gained," the Court of Appeals has noted that damages can be difficult to prove in relation with an unfair competition claim, and the measure of damages is "especially complicated where the injury . . .

affects intangible values" (*E.J. Brooks Co. v Cambridge Sec. Seals*, 31 NY3d 441, 449-450 [2018] [noting that a plaintiffs' compensatory damages may be "practically and flexibly" measured but must reflect the plaintiffs' actual losses]). Though the complaint does not contain allegations precisely setting forth a calculation of plaintiffs' losses, plaintiffs' state that they have sustained losses, and, at this pre-answer stage, those damages need only be alleged, not proven (*e.g.* Doc 1, ¶¶ 76-77). Limited, expedited discovery can be conducted at small cost to the parties to determine the amount, if any, of actual losses plaintiffs sustained as a result of the alleged misappropriation.

Accordingly, the motion is denied with respect to the first cause of action.

2. <u>Breach of fiduciary duty against Stenzler</u>

The court agrees with defendants that the claim that Stenzler breached his fiduciary duties to plaintiffs in disclosing the confidential information intended for Spar must be dismissed as the complaint does not adequately plead the existence of a fiduciary duty arising from a joint venture or partnership.

> "The indicia of the existence of a joint venture are: acts manifesting the intent of the parties to be associated as joint venturers, mutual contribution to the joint undertaking through a combination of property, financial resources, effort, skill or knowledge, a measure of joint proprietorship and control over the enterprise, and a provision for the sharing of profits and losses . . . . [T]he intent of the parties, as one of the factors in determining whether a joint venture exists, may be express *or implied*"

(*Richbell Info. Servs., Inc. v Jupiter Partners, L.P.*, 309 AD2d 288, 298 [1st Dept 2003]).

While the parties may have expressed an intent to form, at some point, a joint venture, the allegations in the complaint are insufficient to plead mutual assent to terms sufficient to state the necessary elements of a joint venture at any time during the parties' four months of discussions.

A claim for breach of a joint venture, or a breach of fiduciary duty arising from the existence of a joint venture, is properly dismissed where "plaintiff failed to sufficiently set forth facts to establish such elements as . . . contribution of property, skills, etc., control over the venture or a sharing of possible financial losses" (*Langer v Dadabhoy*, 44 AD3d 425, 426 [1st Dept 2007]). That the parties discussed the parameters that a joint venture is not enough. Accordingly, absent mutual assent or meeting of the minds as to the terms of the proposed joint venture, the second cause of action must be dismissed (*see id.*).

Plaintiffs may, however, replead their second cause of action to assert additional facts supporting the formation of a joint venture or another qualifying relationship between plaintiffs and Stenzler such that further examination of this claim is warranted.

3. <u>Misappropriation of ideas against all defendants</u>

Plaintiffs allege that they adequately state their misappropriation of ideas claim on the basis that a fiduciary relationship existed as a result of the parties' joint venture (Doc 1, ¶¶ 93-94). To the extent that the court finds, above, that plaintiffs do not adequately allege the elements of a joint venture, plaintiffs' claim for misappropriation of ideas is also insufficiently pleaded and must be dismissed (*see Schroeder*, 133 AD3d at 30, citing *Hudson & Broad, Inc. v J.C. Penney Corp., Inc.*, 2013 WL 3203742, *7, 2013 US Dist LEXIS 89207, *20-22 [SDNY, June 18, 2013], *affd* 553 Fed Appx 37 [2d Cir 2014]).

Plaintiffs may, however, replead their third cause of action to assert additional facts demonstrating that a joint venture or other qualifying relationship existed between plaintiffs and Stenzler such that further examination of this claim is warranted.

The complaint is devoid of any allegations that plaintiffs and Rumble had any relationship whatsoever; accordingly, the claim is dismissed against Rumble without leave to replead.

4. Unjust enrichment against all defendants

"To state a claim for unjust enrichment, a plaintiff must allege that: (1) the [defendant] was enriched, (2) at [plaintiff's] expense, and (3) that it is against equity and good conscience to permit the [defendant] to retain what is sought to be recovered"; the claimant need also establish a "sufficiently close relationship with the other party" that, though not necessarily one of contractual privity, "could have caused reliance or inducement" (*see Schroeder*, 133 AD3d at 26-27 [internal quotation marks omitted]).

As to Stenzler, this unjust enrichment claim is adequately stated because Stenzler and plaintiffs clearly had some relationship, as stated in the complaint, which at least contemplated an agreement to conduct business with each other in some respect. Coupled with plaintiffs' other allegations, this claim can proceed until limited, expedited discovery, as contemplated above, has been completed.

As to Rumble, again, plaintiffs allege no relationship at all. Accordingly, this claim is dismissed as against Rumble for lack of a qualifying relationship.

Accordingly, it is

ORDERED that the motion to dismiss of Defendants Andrew Stenzler and Rumble Fitness LLC is granted in part; and it is further

ORDERED that the second and third causes of action are dismissed against Stenzler; and it is further

ORDERED that the third and fourth causes of action are dismissed against Rumble Fitness LLC; and it is further

ORDERED that plaintiffs may replead their second and third cause of action as against Stenzler within 10 days of entry of this decision and order on NYSCEF or else waived; and it is further

ORDERED that defendants shall answer the complaint within 30 days of entry of this decision and order on NYSCEF; and it is further

ORDERED that the parties shall appear for a preliminary conference in Room 242 at 60 Centre Street on JUNE 17, 2019 at 9:30 am/~~pm~~.

4/8/2019
DATE

ANDREA MASLEY, J.S.C.

CHECK ONE:	☐ CASE DISPOSED		☒ NON-FINAL DISPOSITION			
	☐ GRANTED	☐ DENIED	☒ GRANTED IN PART		☐ OTHER	
APPLICATION:	☐ SETTLE ORDER		☐ SUBMIT ORDER			
CHECK IF APPROPRIATE:	☐ INCLUDES TRANSFER/REASSIGN		☐ FIDUCIARY APPOINTMENT		☐ REFERENCE	