Eagle Energy Brokers, LLC v Stanton
2017 NY Slip Op 30834(U)
April 21, 2017
Supreme Court, New York County
Docket Number: 652201/2013
Judge: Shirley Werner Kornreich
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SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK: PART 54

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EAGLE ENERGY BROKERS, LLC, Index No.: 652201/2013

Plaintiff, **DECISION & ORDER**

-against-

JOHN JOSEPH STANTON and GA GLOBAL MARKETS, LLC,

Defendants.

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SHIRLEY WERNER KORNREICH, J.:

Before the court are the parties' competing motions for summary judgment (Seq. 002 & 003), which are consolidated for disposition. For the reasons that follow, the motions are granted in part and denied in part.

I. Background

Unless otherwise indicated, the following facts are undisputed.

Plaintiff Eagle Energy Brokers, LLC (Eagle or the Company) "is a brokerage service provider specializing in over-the-counter derivatives within the energy markets. Its primary focus is in the Crude Oil and Products markets." Dkt. 43 at 7.[1] In December 2008, Eagle's managing member, non-party James Zang, hired defendant John Joseph Stanton, who had no prior experience as a commodities broker. Stanton's employment was originally governed by employment agreements dated January 21, 2009 (Dkt. 49) and July 1, 2009 (Dkt. 50), pursuant to which, respectively, he received annual base salaries of $50,000 and $55,000, plus a discretionary bonus (which, in 2010, was $80,000). It is undisputed that these employment agreements do not govern the parties' disputes.

[1] References to "Dkt." followed by a number refer to documents filed in this action on the New York State Courts Electronic Filing (NYSCEF) system.

On April 8, 2011, Stanton executed a new employment agreement that was made effective as of January 1, 2011. *See* Dkt. 52 (the 2011 Agreement). The 2011 Agreement is governed by New York law. *See id.* at 5. Section 1 provides that the 2011 Agreement has a term of 3 years, ending on January 1, 2014. *See id.* at 1. The term, moreover, automatically would extend for additional one year terms unless either Stanton or Eagle "gives a minimum of ninety (90) days' notice to the other party prior to such date that he/it elects to permit the term of this Agreement to expire without extension." *See id.*[2] Section 2(a) provides that Stanton will receive a base salary of $85,000 per year, which could be increased at Eagle's sole discretion. *See id.* Section 2(b) then provides that, as in the prior years, Station was eligible for discretionary bonuses, also in Eagle's sole discretion. *See id.*

Section 3's four subsections govern how Stanton may resign or be terminated. Applicable to this case is section 3(a), titled "Resignation."[3] It provides:

> [Stanton] may terminate his employment under this Agreement at any time **upon ninety (90) days' advance written notice to the Company**. The Company shall not be obliged to provide [Stanton] with any work at any time after notice of resignation has been given by the Employee and **the Company may, in its discretion, require [Stanton] to comply with such conditions as it may specify in relation to attending [] or remain[ing] away from, the place of business of the Company; require [Stanton] to refrain from contacting colleagues, customers or other business contacts**; assign [Stanton] to other duties; and/or relinquish all duties or powers of [Stanton]. However, [Stanton] will remain an employee of the Company and will continue to be bound by his duties of confidentiality and good faith to the Company as well as all contractual duties

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[2] This is consistent with section 3(d). *See* Dkt. 52 at 3 ("In the event the Term is not automatically extended as provided for in Section 1 of this Agreement, it shall expire on January 31, 2014 and the Employee's employment shall terminate at that time as a result of nonrenewal."). It should be noted that, while not material to this case, it is unclear why section 1 has default termination date of January 1, 2014, while the same date in section 3(d) is set as January 31, 2014.

[3] It is undisputed that Stanton was not terminated with cause under section 3(b) or terminated without cause under section 3(c).

> under this Agreement **and will not be free to take up any other employment during this period**.

Dkt. 52 at 2 (emphasis added). Ergo, during the 90-day period, Eagle can make Stanton come in to work, not contact customers, and not work for another firm.

Sections 4 and 5 contain restrictive covenants. Section 4 begins with the following preface:

> The Parties acknowledge that **[Stanton] will have substantial relationships with the Company's existing and prospective clients, and that [Stanton] will occupy a position of trust and confidence with respect to the Company's affairs and business**. The Parties further agree that the following obligations **are reasonable and necessary to protect the business, value, and legitimate interests of the Company**, and to protect the Company against harmful solicitation of customers and employees, harmful competition, and other actions by [Stanton] that would result in serious adverse consequences for the Company. **[Stanton] covenants and agrees that [he] shall inform any future employer ... of the covenants set forth in this Section 4 and Section 5** during the time period such covenants apply to the Employee.

Id. at 3 (emphasis added). Stanton then acknowledges "that the Company would not employ him or continue to employ him absent his agreement to the restrictive covenants in this Agreement," and that he "agrees that during his employment and for a period of three (3) months following the termination of his employment for any reason, he will not", *inter alia*, work for a competitor or solicit the Company's customers. *See id.* Section 5 contains further restrictions applicable while Stanton is employed by the Company, such as disclosing confidential information. *See id.* at 4. Section 8, a merger clause, provides that the 2011 Agreement contains the entirety of the parties' agreement. *See id.* at 5. It does not, however, require amendments to be in writing.

In the summer of 2012, approximately midway through the term of the 2011 Agreement, Stanton sought to renegotiate his employment agreement. It is undisputed that while some of the parties' negotiations were oral, many of the negotiations were conducted by email and instant

message, which were produced in discovery and submitted on the instant motions. It is further undisputed that the four main issues were an increase in commissions (i.e., Stanton's bonus), whether such commissions would become guaranteed (as opposed to discretionary, as they were under Stanton's first three employment agreements), the new term of employment, and broader restrictive covenants.

In an August 8, 2012 email to Zang, Stanton made clear that higher compensation was essential if he was to stay with the Company. *See* Dkt. 54.[4] Stanton laid out a concrete, detailed proposal in a September 20, 2012 email to Zang, including a guaranteed bonus formula. *See* Dkt. 55. The parties' email correspondence from October and November 2012 clearly evidence the parties' failure to reach a definitive agreement on all terms of a new employment agreement. *See* Dkt. 56. However, in a November 13, 2012 email, Zang indicates that the parties reached some sort of an agreement regarding Stanton's bonus,[5] but it is unclear from that email and the

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[4] Stanton refers to this email as the "August 2012 Amendment." *See* Dkt. 76 at 10. The court will not refer to it as such because, on its face, it is clear that the parties were still negotiating. As should be clear by the court's discussion of the parties' emails over the next eight months, those negotiations were protracted and did not lead to a final agreement. Stanton also claims in his brief that Zang supposedly admitted at his deposition that they had reached an agreement. However, it is clear from the deposition transcript (as opposed to the snippets cited in Stanton's brief) that only economic terms (i.e., a commissions formula; not making the commissions guaranteed, as opposed to discretionary) were agreed upon. *See* Dkt. 82 at 42 (Zang 11/17/15 Dep. Tr. 163-64). Zang's deposition confirms, as does other ample evidence in the record, that there is no question of fact that economic terms were but one of a few material terms (e.g., scope of restrictive covenants) upon which agreement was required before the parties were willing to execute a new agreement. Stanton's attempts to segregate economic and other issues does not comport with the record. Nor is it in keeping with the parties' three prior contracts, which always included all material terms, not just compensation. Indeed, it is clear that not only was there no meeting of the minds on the restrictive covenants issues, but, as Zang explains, Stanton's confusion about how restrictive covenants operate and his objections to them contributed to the impasse. *See id.*

[5] The fact that Stanton may have received a bonus in line with his proposal is not evidence of an agreement. Since the 2011 Agreement granted the Company the discretion to pay Stanton

corresponding email chain whether the agreement was over timing (i.e., the date bonus would be paid) due to cash flow issues, or whether there was an agreement over a new bonus formula. *See* Dkt. 57. Regardless, as the rest of their communications make clear, they never reached an agreement on Stanton's commissions becoming guaranteed.

The parties' subsequent correspondence, such as their February 5, 2013 emails, demonstrate that they were still negotiating Stanton's compensation. *See* Dkt. 58. It also is undisputed that in February 2013, "Zang handed Stanton a copy of [a] new written employment agreement when they were both in London" which "contained [a] three-year term, quarterly bonus formulas, as well as the increased restrictive covenant periods which Zang had previously discussed with Stanton." Dkt. 43 at 12. By email on February 21, 2013, Stanton told Zang that he did not have time to read it and would get back to him "in a few days." *See* Dkt. 59. On February 28, 2013, Zang followed up by instant message,[6] asking to "chat about [the proposed] contract." *See* Dkt. 60 at 6. The parties further communicated by instant message on March 7, 2013 (it appears that a broken foot caused Stanton's delay). *See id.* at 7. Their chat demonstrates that no agreement had been reached. *See id.* Indeed, Zang and Stanton make it clear that they will follow up regarding the contract the following week. *See id.* at 8.

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whatever it wanted, the Company could have chosen to pay Stanton the amount he requested to keep him happy. While the evidence in the record makes clear that the parties did not reach an agreement to guaranty Stanton's bonuses, it bears mentioning that this fact is effectively of no moment by virtue of the court's summary judgment rulings on Stanton's breaches (i.e., Stanton concedes that any guaranteed payment would have been due at the end of April 2013, after Stanton already breached by failing to show up for work after he resigned on April 12, 2013). Thus, even if the parties had reached an agreement (which, again, they did not), Stanton's breach precludes him from recovering against Eagle.

[6] Dkt. 60 is a log of the parties' instant messages between January 24, 2013 and April 6, 2013.

Zang followed up by instant message on March 18, 2013, asking Stanton about his leg (he was doing better). *See id.* at 10. The parties agreed to talk the next day. *See id.* Their chat again confirmed that Stanton's contract situation was not yet "wrap[ped] up." *See id.* Things were still unsettled on March 25, 2013. Zang was clearly upset. He called Stanton "arrogant" for staying in bed and not calling him, and warned that unless a signed agreement was in place by the next day, he would "legally enforce with [sic] company rights." *See id.* The parties appeared to reach an impasse, as Zang stated he not interested in further negotiations. *See id.*

Zang had previously expressed his frustration with Stanton in a March 19, 2013 email, in which he chides Stanton for seeking better terms based on a "good 2 week run." *See* Dkt. 61. This email also confirms that while Zang may have agreed on *the amount of Stanton's compensation*, he did not agree to make that compensation *guaranteed* unless Stanton's agreed to Zang's proposed restrictive covenants. *See id.* This email, the veracity of which is not challenged by Stanton, confirms that even if higher commissions starting in August 2012 was agreed to, the payment of those commission would not become guaranteed until after Stanton signed his new employment agreement with broader restrictive covenants. *See id.* ("All broker contracts are restrictive where guaranteed payments are determined – there's a reason for that."). While Stanton responded that he would consider it [*see id.*], he ultimately refused to do so. Thus, as discussed herein, his claim to unpaid commissions fails because, since he was operating under the 2011 Agreement, such commissions were discretionary.

Nonetheless, the parties continued to negotiate after their March 25, 2013 chat. *See, e.g.*, Dkt. 62 (March 26, 2013 emails). Zang sent Stanton a proposed amended employment agreement in an attachment to an April 2, 2013 email, which would be made effective as of

October 1, 2012. *See* Dkt. 63. While this prompted further extensive negotiations by email on April 8, 2013 [*see* Dkt. 64], those negotiations were the last. The parties never had a meeting of the minds on guaranteed compensation and, in fact, Stanton kept trying to bargain for further increases to his commissions. These emails confirm that guaranteed commissions were never agreed upon.

On April 12, 2013, Stanton told Zang that he wished to resign. *See* Dkt. 64 at 5. Zang responded that Stanton's notice period had been "activated" and that it would, per the 2011 Agreement, last for 3 months, during which time Stanton was to work for the Company. *See id.* Stanton then asked if he would get a discretionary bonus for working for these 3 months (he would receive his base salary). *See id.* at 4. Zang said no because, as he correctly indicated, that was his right under the 2011 Agreement. *See id.* Stanton replied that he would not come in to work without a bonus and demanded payment of his bonus for the period of January 1, 2013 to April 12, 2013 (he had no contractual right to make either demand). *See id.* Zang responded by (correctly) noting that Stanton's position was legally incorrect under the 2011 Agreement. *See id.* Stanton then actually acknowledged what the contract required, but refused to work without being paid commissions. *See id.* at 2. Zang replied with an accurate outline of Stanton's contractual obligations during the next three months, and Stanton again responded with a demand for commissions. *See id.* at 1-2.

Stanton did not come into work during the three months after his April 12, 2013 resignation, thereby breaching section 3(a) of the 2011 Agreement. Instead, on June 3, 2013, he began working for a competitor, defendant GA Global Markets LLC (Global), thereby breaching sections 3(a) and 4 of the 2011 Agreement. It is undisputed that during Stanton's three-month

restrictive covenant period – April 12, 2013 through July 11, 2013 – while at Global, Stanton generated $395,452 in revenue from Eagle's clients. There is some non-speculative evidence of the profit Eagle would have made on this revenue, but nothing definitive.[7]

Eagle commenced this action on June 21, 2013 by filing a complaint, which has never been amended. *See* Dkt. 1.[8] The complaint contains causes of action for (1) breach of the 2011 Agreement, asserted against Stanton; (2) tortious interference with contract, asserted against GA Global; and (3) injunctive and declaratory relief, asserted against both defendants.[9] On July 22, 2013, defendants filed separate answers to the complaint (they are represented by the same

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[7] Stanton contends, without citation to authority, that the sort of damages Eagle seeks (disgorgement of profit on its clients during the three-month restrictive covenant period) is too speculative to be awarded as a matter of law. He is wrong. *See Hunts Point Realty Corp. v Pacifico*, 56 AD3d 721 (2d Dept 2008) ("The proper measure of damages for breach of a covenant not to compete is the net profit of which the plaintiffs were deprived by reason of the defendant's improper competition."), citing *Earth Alterations, LLC v Farrell*, 21 AD3d 873, 874 (2d Dept 2005). Nonetheless, the court does not grant summary judgment to Eagle on damages because Eagle's moving papers failed to include any prima facie evidence of its lost profits. It suggests in its reply brief that it had a profit margin of 44% [*see* Dkt. 103 at 18], but this is not enough to warrant summary judgment. It also should be noted that Eagle's Note of Issue requests a jury. *See* Dkt. 40. A jury trial seems to be an unwarranted expense in such a simple damages case. As directed below, if Eagle elects to forgo jury trial, the court will order an inquest before a referee on a hear and determine basis, which is likely the most cost effective and expeditious process of getting to the point of issuing a monetary judgment. This benefits defendants as well given the 9% pre-judgment interest currently accumulating and the significant cost of a jury trial. Of course, under these circumstances, a settlement is perhaps the best path to finality, as it would save the time, expense, and uncertainly of appeal. After all, even if Eagle's profit margin was indeed the 44% indicated in its reply papers, that would mean the amount at stake is merely approximately $174,000 (.44 * $395,452) plus approxmatly $60,000 (four years of pre-judgment interest) – totaling approxmatly $234,000, an amount that could be exceeded by the parties' collective legal costs going forward.

[8] Despite commencing this action during the restrictive covenant period, Eagle did not move for preliminary injunctive relief.

[9] The court *sua sponte* dismisses the third cause of action because, at this juncture (nearly four years after the restrictive covenant period ended), Eagle's claim for injunctive relief is moot; declaratory relief is unnecessary because monetary damages will sufficiently compensate Eagle.

counsel). *See* Dkt. 4 & 5. Stanton's answer asserts counterclaims against Eagle for (1) breach of contract (i.e., failure to pay what Stanton avers were guaranteed commissions in the amount of $213,600); (2) violation of New York Labor Law (Labor Law) §§ 190 *et seq.* for late payment of commissions and for attorneys' fees and liquidated damages under Labor Law § 198; (3) conversion; and (4) unjust enrichment.[10] *See* Dkt. 5. Discovery was conducted between the preliminary conference on July 22, 2014 and the filing of the Note of Issue on December 17, 2015. The parties filed the instant summary judgment motions on February 19, 2016, and the court reserved on the motions after oral argument. *See* Dkt. 109 (11/22/16 Tr.).

II. Discussion

Summary judgment may be granted only when it is clear that no triable issue of fact exists. *Alvarez v Prospect Hosp.*, 68 NY2d 320, 325 (1986). The burden is upon the moving party to make a *prima facie* showing of entitlement to summary judgment as a matter of law. *Zuckerman v City of New York*, 49 NY2d 557, 562 (1980); *Friends of Animals, Inc. v Associated Fur Mfrs., Inc.*, 46 NY2d 1065, 1067 (1979). A failure to make such a *prima facie* showing requires a denial of the motion, regardless of the sufficiency of the opposing papers. *Ayotte v Gervasio*, 81 NY2d 1062, 1063 (1993). If a *prima facie* showing has been made, the burden shifts to the opposing party to produce evidence sufficient to establish the existence of material issues of fact. *Alvarez*, 68 NY2d at 324; *Zuckerman*, 49 NY2d at 562. The papers submitted in support of and in opposition to a summary judgment motion are examined in the light most favorable to the party opposing the motion. *Martin v Briggs*, 235 AD2d 192, 196 (1st Dept

[10] For the reasons explained herein, the court *sua sponte* dismisses the conversion and unjust enrichment claims because the 2011 Agreement exclusively governs the parties' rights. While Eagle does seek dismissal of these counterclaims in its moving brief, it does so based on arguments the court does not reach (e.g., statute of frauds).

1997). Mere conclusions, unsubstantiated allegations, or expressions of hope are insufficient to defeat a summary judgment motion. *Zuckerman,* 49 NY2d at 562. Upon the completion of the court's examination of all the documents submitted in connection with a summary judgment motion, the motion must be denied if there is any doubt as to the existence of a triable issue of fact. *Rotuba Extruders, Inc. v Ceppos*, 46 NY2d 223, 231 (1978).

There is no question of fact that Stanton breached the 2011 Agreement during the three-month notice period by failing to come into work, working for a competitor (GA Global) and generating revenue for GA Global by soliciting Eagle's clients during the restricted three-month period. None of Stanton's defenses have merit. As demonstrated at length above, the parties' correspondence makes clear that there was never a meeting of the minds about Stanton being guaranteed a bonus. The 2011 Agreement made *all* of his compensation, aside from his base salary (which he was paid), entirely discretionary. Even if the parties had reached an agreement on a new, higher level of commissions for Stanton in the fall of 2012, they never reached a meeting of the minds on amending the 2011 Agreement. Hence, Stanton's contention that Eagle is foreclosed from suing him for breach of contract due its own non-performance (i.e., failure to pay supposed guaranteed commissions) is unavailing.

Stanton's other defense is that the 2011 Agreement's restrictive covenants, which prohibit him from working for a competing firm and soliciting Eagle's clients for three months, are unenforceable under New York law. Stanton is wrong. It is well settled under New York law that non-competes that are designed to protect customer relationships and goodwill that are reasonable in scope and duration are enforceable. *Reed, Roberts Assocs., Inc. v Strauman*, 40 NY2d 303, 307 (1976). Reasonableness is the essential inquiry. Under New York law, the

reasonableness of a restrictive covenant is evaluated under "a three-pronged test. A restraint is reasonable only if it: (1) is no greater than is required for the protection of the legitimate interest of the employer, (2) does not impose undue hardship on the employee, and (3) is not injurious to the public." *BDO Seidman v Hirshberg*, 93 NY2d 382, 388–89 (1999).[11] "An employer's legitimate interest can include preventing an employee from misappropriating trade secrets or confidential customer lists or keeping an employee with unique or extraordinary skills from joining a competitor to the employer's detriment." *1 Model Mgmt., LLC v Kavoussi*, 82 AD3d 502, 503 (1st Dept 2011), citing *Reed, Roberts*, 40 NY2d at 308; *see also Crown IT Servs., Inc. v Koval-Olsen*, 11 AD3d 263, 265 (1st Dept 2004) ("an 'employer has a legitimate interest in preventing former employees from exploiting or appropriating the goodwill of a client or customer, which had been created and maintained at the employer's expense, to the employer's competitive detriment.'"), quoting *BDO Seidman*, 93 NY2d at 392.

Importantly, in this case, Eagle does not seek damages simply because Stanton sought to make a living, even by working for a competitor. Rather, as Eagle makes clear, the damages it seeks are limited to revenue generated during the restrictive covenant period *only* attributable to Eagle's clients, and only for the three-month period after Stanton quit (April 12, 2013 through July 11, 2013).[12] These limitations make Eagle's claim all the more reasonable. Indeed, by not having sought a preliminary injunction, Eagle has not deprived Stanton of the opportunity to

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[11] Stanton does not argue, nor is there any reason to believe, that his restrictive covenants harm the public.

[12] Since it is well settled that restrictive covenants that are too broad on their face may be pared down by the court [*see BDO Seidman*, 93 NY2d at 394-95], there is no reason why the former employer cannot preempt any such paring by seeking less enforcement than permitted under the contract. *See Ashland Mgmt. Inc. v Altair Investments NA, LLC*, 59 AD3d 97, 106 n.3 (1st Dept 2008) (noting that so-called blue penciling of restrictive covenants is permitted), *aff'd as mod.*, 14 NY3d 774 (2010).

make a living. *See Purchasing Assocs., Inc. v Weitz*, 13 NY2d 267, 272 (1963) ("the loss of a man's livelihood" is the main public policy concern with non-competes).

Since Eagle only seeks recourse for revenue attributable to its clients for the subject three-month period, the court finds this recourse to be sufficiently narrowly tailored. A three-month non-solicit is enforceable, especially here, where Stanton was entitled to be paid his base salary during this period of "garden leave." While Eagle did not offer to pay Stanton a bonus during this three-month notice period, they had no obligation to do so.

Courts have, in fact, permitted longer periods of customer solicitation prohibitions. *See DS Courier Servs., Inc. v Seebarran*, 40 AD3d 271, 272 (1st Dept 2007) ("The covenant prohibits defendant from negotiating directly or indirectly with any of six identified customers of plaintiff for a period of 120 days after termination of defendant's service, voluntary or otherwise. Such covenant 'is, on its face, reasonably limited, both temporally and geographically, and not unduly burdensome,' and therefore prima facie enforceable."), *accord BDO Seidman*, 93 NY2d at 392 (enforcing restriction on soliciting clients for 18 months; explaining that "the employee has been enabled to share in the goodwill of a client or customer which the employer's over-all efforts and expenditures created. The employer has a legitimate interest in preventing former employees from exploiting or appropriating the goodwill of a client or customer, which had been created and maintained at the employer's expense, to the employer's competitive detriment."); *see also* Dkt. 43 at 20 (collecting cases), *e.g., Mallory Factor Inc. v Schwartz*, 146 AD2d 465 (1st Dept 1989) (enforcing 18-month restrictive covenant).

While the scope – an international non-compete – is broad, such scope is reasonable in this instance because the type of work performed by Stanton could be performed from anywhere

in the world where Stanton has an internet connected computer (with access to the Intercontinental Exchange Instant Messaging System and trading platform) and a phone. *See* Dkt. 43 at 21 (collecting cases explaining why international scope is warranted due to international nature of business), *e.g., Estee Lauder Companies Inc. v Batra*, 430 FSupp2d 158, 181 (SDNY 2006). A narrower scope would undermine the efficacy of the non-compete. Finally, while Stanton takes the position that a financial broker's services are not sufficiently unique or extraordinary[13] to permit the enforcement of a non-compete, numerous courts have held to the contrary. *See Kelly v Evolution Markets, Inc.*, 626 FSupp2d 364, 371 (SDNY 2009), citing *Natsource LLC v Paribello*, 151 FSupp2d 465, 470 (SDNY 2001). Stanton cites no case in which a broker in his position was held not to be subject to a three-month non-compete.

There also is no question of fact that GA Global tortiously interfered with the 2011 Agreement. "Tortious interference with contract requires the existence of a valid contract between the plaintiff and a third party, defendant's knowledge of that contract, defendant's intentional procurement of the third-party's breach of the contract without justification, actual breach of the contract, and damages resulting therefrom." *Lama Holding Co. v Smith Barney Inc.*, 88 NY2d 413, 424 (1996). It is undisputed that GA Global knew about the restrictive covenants applicable to Stanton and nonetheless permitted Stanton to work for it soliciting Eagle's clients, thereby making money off Stanton's breach. This is a textbook example of tortious interference with contract.[14] *See White Plains Coat & Apron Co. v Cintas Corp.*, 8

[13] Based on the record, there is no question that Stanton's level of success (i.e., the money he made for Eagle) was the very reason he sought higher and guaranteed commissions. Hence, it is somewhat cynical for him to claim that his services were not extraordinary.

[14] "It is undisputed that [GA Global] knew about the [2011] Agreement and the non-competition and non-solicitation requirements contained therein inasmuch as (i) Stanton provided [GA

NY3d 422, 426 (2007) ("A defendant who is simply plaintiff's competitor and knowingly solicits its contract customers is not economically justified in procuring the breach of contract."). GA Global, therefore, is liable for Stanton's breach.

In sum, the court grants summary judgment on liability to Eagle against defendants on its first two causes of action (the third, as noted earlier, is *sua sponte* dismissed as moot). Summary judgment on damages, however, is denied. As previously explained, Eagle did not proffer a sufficient prima facie showing of its damages (i.e., its lost profits on $395,452). As directed below, the parties shall contact the court to discuss how the damages portion of this case shall proceed.

Eagle also is entitled to summary judgment on and dismissal of Stanton's counterclaims. While a claim for commissions in the form of a "guaranteed and non-discretionary bonus" may give rise to a claim for additional damages and attorneys' fees under the Labor Law [*see Ryan v Kellogg Partners Institutional Servs.*, 19 NY3d 1, 14-16 (2012)], absent a viable underlying claim for non-payment of a guaranteed bonus (which Stanton lacks), Stanton cannot recover anything under the Labor Law. *See Gottlieb v Kenneth D. Laub & Co.*, 82 NY2d 457, 464-65 (1993).

Finally, regardless of the merits of Stanton's contractual claim to commissions, there is no basis for him to assert claims for conversion or unjust enrichment because the 2011 Agreement governs his rights. Stanton cannot maintain "a cause of action for unjust enrichment as the existence of a valid contract governing the subject matter generally precludes recovery in quasi contract for events arising out of the same subject matter." *EBC I, Inc. v Goldman, Sachs*

Global's President, Jeff] Pesot with a copy of the [2011] Agreement, and (ii) Pesot admitted [at his deposition [*see* Dkt. 85 (Pesot's 12/14/15 Dep. Tr. at 19-20)] he was aware of those provisions at the time he hired Stanton." Dkt. 43 at 26.

& Co., 5 NY3d 11, 23 (2005), citing *Clark-Fitzpatrick, Inc. v Long Island R.R. Co.*, 70 NY2d 382, 388 (1987). Likewise, Stanton's conversion claim fails because it merely is "a restatement of his breach of contract claim." *Fesseha v TD Waterhouse Inv'r Servs., Inc.*, 305 AD2d 268, 269 (1st Dept 2003).

For these reasons, partial summary judgment is granted to Eagle, and all of Stanton's counterclaims are dismissed.[15] Accordingly, it is

ORDERED that: (1) summary judgment on liability (but not on damages) is granted to Eagle on its first two causes of action for breach of the 2011 Agreement against Stanton and tortious interference with that contract against GA Global; (2) Eagle's third cause of action for injunctive and declaratory relief is dismissed *sua sponte* as moot; (3) all of Stanton's counterclaims are dismissed with prejudice; and (4) and the motions are otherwise denied; and it is further

ORDERED that a telephone status conference will be held on May 16, 2017 at 3:30 pm, at which time the parties shall be prepared to discuss the process by which a trial or inquest on damages shall be conducted; and it is further

[15] This obviates the need to reach certain of Eagle's alternative arguments, such as the statue of frauds. Defendants' summary judgment motion is denied because they have lost on all of the claims on which they seek summary judgment. While defendants have prevailed on Eagle's claim for injunctive and declaratory relief, they have not done so based on any arguments set forth in the briefs, but based on the court's *sua sponte* ruling that such claims must be dismissed as moot.

ORDERED that prior to such call, the parties' are directed to engage in a good faith settlement discussions and shall e-file and fax a joint letter (not to exceed 3 pages) to the court no later than May 11, 2017 at 4:00 p.m., which shall set forth the parties' proposals regarding the trial or inquest.

Dated: April 21, 2017

ENTER:

J.S.C.

SHIRLEY WERNER KORNREICH
J.S.C.