SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK : PART 45

THEODORE F. SCHROEDER, RENDEZVOO LLC, and SKOOP MEDIA ASSOCIATES, LLC,	:	
Plaintiffs,	:	Index No. 652183/2013
-against-	:	DECISION AND ORDER
PINTEREST INC., BRIAN S. COHEN, and NEW YORK ANGELS, INC.,	:	Motion Sequence Nos. 001 and 002
Defendants.	:	

MELVIN L. SCHWEITZER, J.:

The plaintiffs allege claims for: Unjust Enrichment (I), Misappropriation of Trade Secrets (II), and Misappropriation of Skills and Expenditures (III) against all Defendants; Promissory Estoppel (IV) and Breach of Fiduciary Duty (V) against Brian S. Cohen (Mr. Cohen) only; and Aiding and Abetting Breach of Fiduciary Duty (VI) against Pinterest Inc. (Pinterest) only. Defendants move to dismiss (Mot. Seq. Nos. 001 and 002) all claims pursuant to CPLR 3211 (a) (1) (documents), (5) (time-barred) and (7) (failure to state a cause of action).

Facts

The facts are as alleged in the complaint.

In 2005, while attending Columbia Law School, Theodore Schroeder (Mr. Schroeder) and a law school classmate, Brandon Stroy (Mr. Stroy), worked together to develop an idea for a socially networked bulletin board (Board) where users came together to share their physical locations with their friends on the Internet. At the time, no such website existed. Mr. Schroeder realized that he would be better off if he had the technological expertise to bootstrap his idea into

a web application. He learned how to develop programs and applications by teaching himself the necessary computer and programming skills while developing an appropriate application for his idea. Mr. Schroeder enlisted another former classmate, William Bocra (Mr. Bocra), to help further develop his idea. The project became formalized through the creation of Rendezvous LLC (RDV). Mr. Schroeder was allotted a 65% majority interest in RDV and named its President, and thus became responsible for handling RDV's day-to-day matters. Mr. Schroeder also retained responsibility for all technical work in connection with the development of RDV's website www.Rendezvoo.com. RDV was given the right to use, market, and further develop Mr. Schroeder's ideas. Neither Mr. Schroeder's ideas nor work product were formally transferred to RDV or any other company or person. RDV's operating agreement made clear that the members owed each other certain fiduciary duties and prohibited the unilateral taking of any corporate opportunity by any member.

More than a year later, the first version of www.Rendezvoo.com was released to the public. Mr. Schroeder developed and built every technical aspect of Rendezvoo.com, and the large concepts underpinning the web application originated with him. Mr. Schroeder convinced Mr. Stroy and Mr. Bocra during 2006 that the scope of Rendezvoo.com should be expanded in a second version to have its social networked bulletin Boards share more than its users' locations; users could share any interest they had. Mr. Schroeder thus rebuilt the application to address this new focus and introduced the new concepts to the existing user community in an alpha release in August 2006. Version 2 of RDV's web application (RDV version 2) provided Boards for users to post their interests.

By mid-2006, Mr. Schroeder had personally invested more than 5,000 hours developing RDV's website and applications. By the end of 2006, Messrs. Schroeder, Stroy, and Bocra

began to look for capital to further advance the RDV project. That search led to Mr. Schroeder's introduction to Brian Cohen (Mr. Cohen), then affiliated with New York Angels (NYA) – an independent consortium of angel investors in New York City that works with entrepreneurs.

In January 2007, Messrs. Schroeder, Stroy, and Bocra met Mr. Cohen to present RDV's business model and plan. The plan, drafted a year earlier as Mr. Schroeder was developing RDV version 2, described the site as one "where people meet to share opinions, views, items and tastes on a variety of subjects – products, services, events, politics, and economics – nearly anything of human interest." At the time of the first meeting with Mr. Cohen, Rendezvoo.com had an operating web application with more than 5,000 users. After the initial meeting in January 2007, Mr. Cohen stated that he was happy to meet with the RDV team again to help "polish [their] marketing and pitch." Thereafter, the parties discussed taking RDV's web application and focusing it on new ideas, products, and services.

It was agreed that the scope of www.Rendezvoo.com would be narrowed, so Mr. Schroeder worked to develop a more narrowly tailored web application that was based upon the concepts and ideas developed in RDV version 2 during 2006. Their efforts were successful. Mr. Schroeder's technological efforts led to the creation of what was referred to within RDV as the "Launchbed" platform. Mr. Schroeder saw positive aspects of "Launchbed," remarking that the "beauty of this thing if we pull it off is the ability for the launcher to interact with those users checking it out" and that "you as content producer/launcher get to launch your art/site/product and control the branding message that results." The initial Launchbed.com branding statement provided: "Launchbed is the website and user community where people and companies can launch new products, services, ideas, and media...." Mr. Schroeder, along with others from RDV, provided the Launchbed concept and business model to Mr. Cohen on March 16, 2007.

In May 2007, Messrs. Schroeder, Bocra, and Stroy offered a partnership to Mr. Cohen, which on May 24, 2007 Mr. Cohen accepted. At the time Mr. Cohen was being considered as a partner, RDV was organized as a limited liability company with its ownership interests allocated 65% to Mr. Schroeder and 17.5% each to Mr. Stroy and Mr. Bocra. Messrs. Schroeder, Stroy, and Bocra proposed to Mr. Cohen that if he were to join the company, Mr. Schroeder would reduce his ownership interest to 46% and Messrs. Cohen, Stroy, and Bocra would each own 18%. Mr. Schroeder maintained a substantial ownership of RDV in recognition of his ideas and efforts. Mr. Cohen became RDV's Chairman and Chief Executive Officer, although his title was never formally memorialized. Indeed, the parties directly involved with RDV (and, later, SMA) routinely ignored corporate formalities at Mr. Cohen's direction. In joining RDV, Mr. Cohen agreed to be bound to the requirements and covenants in RDV's operating agreement, including not taking Mr. Schroeder's ideas or using RDV's work product. Further, Mr. Cohen promised to contribute $20,000 to the project.

As the parties worked to refine their revised business model, Mr. Cohen declared, "We are creating the first to know 'people wire service' for the masses on the Internet! Thus, Scoopwire.com began to make more sense." Skoopwire.com[1] was the narrowly-focused version of RDV version 2. As Messrs. Schroeder, Stroy, and Bocra continued to refine RDV's concepts and build a prototype of what became Skoopwire.com, Mr. Schroeder taught Mr. Cohen about the social networking niche in which Rendezvoo/Skoopwire.com operated. In response to Mr. Cohen's urging, the others agreed to take down RDV version 2 to focus on Skoopwire.

At the same time the parties were working on the web design for Skoopwire.com, Mr. Schroeder was working to develop Skoopwire.com's technology plan. In June 2007,

[1] Issues in obtaining a domain name resulted in "scoopwire" becoming "Skoopwire."

Mr. Schroeder spoke about Skoopwire.com's technology plan with Mr. Cohen, including information regarding the architecture and platform for the website together with an analysis of how the website would permit interaction between Skoopwire.com's customers and a collection of customer data. When the parties were discussing the technology plan for Skoopwire.com, they also discussed Mr. Schroeder's "usability principles." Mr. Schroeder identified that one key aspect of Skoopwire.com was that, like RDV version 2, the website intended to "[l]et the user design the site, not the designer."

On June 29, 2007, the parties began the first steps to restructure RDV when they formed and incorporated Skoop Media Associates, Inc. (SMA) in Delaware. It was Mr. Cohen's idea to use SMA rather than the RDV limited liability company. Corporate formalities continued to be ignored despite the addition of Mr. Cohen, a supposedly experienced angel investor. Those directly involved in SMA did not memorialize any agreements concerning legal ownership of Mr. Schroeder's ideas and work product. On July 3, 2007, after much work and analysis, the parties privately launched the website Skoopwire.com for testing, customer review, and analysis. RDV, however, was never dissolved or merged into SMA.

From July 2007 through October 2007, the parties tested the Skoopwire.com website with family members, friends, and others. Skoopwire.com compiled and used this information to further develop and refine the website. By September 2007, Mr. Cohen was representing himself to focus groups and potential customers as the Chairman and CEO of Skoopwire. In one email, he stated: "For some time I wondered if there could be a free wire service (complimentary to Businesswire) that would focus on ONLY new products and services (revenue producing releases) introductions and be more directed at bloggers and sophisticated customers. Additionally, as the role of PR professionals have evolved to talking more with customers, could

such a wire service also include an interactive conversation browser. . . . That's what we have created. Skoopwire is it's [sic] name." Messrs. Schroeder, Bocra, and Cohen agreed that Skoopwire.com was "a free, direct-to-consumer newswire connecting businesses to bloggers, sophisticated customers, and journalists wanting the easiest access to information about new products and services. Skoopwire.com makes it easy and convenient to launch, find, discover, and discuss these new products and services before they are covered in the mainstream media." Skoopwire differed from RDV version 2 in that RDV version 2 allowed users to post anything of interest to them, "new" or not.

In September 2007, focus groups were returning favorable results – results to which Mr. Cohen was privy, but the public was not. Soon after, as the parties were looking to launch www.Skoopwire.com to the public, Mr. Cohen became upset with what he perceived to be Mr. Stroy's lack of involvement in the project. He believed his role as Chairman and CEO of Skoopwire warranted a greater ownership position that his present, equal 18% share with Mr. Stroy, and wanted to push out Mr. Stroy entirely. When Mr. Schroeder attempted to finalize a shareholders agreement maintaining Mr. Stroy as an owner, Mr. Cohen balked at the idea, writing on November 5, 2007, the "shareholders agreement is the least important issue . . . You and I must meet (again) to see if an ONGOING trusting relationship can be truly found."

Mr. Cohen persisted in arguing for Mr. Stroy's ouster and for an increased financial interest in Skoopwire for himself. Those efforts, in combination with Messrs. Schroeder, Stroy, and Bocra giving Mr. Cohen certain rights under the organizational documents of RDV and Skoopwire, effectively deadlocked the project. Meanwhile, Mr. Cohen had not fulfilled his promise to contribute the full $20,000 to the project, paying only a fraction thereof. That capital contribution was never returned to Mr. Cohen, who never ceased to be an owner of RDV.

Mr. Cohen's efforts to deadlock the project and freeze out Mr. Schroeder succeeded. By early 2008, the parties started contemplating a liquidation of Skoopwire by means of a liquidation agreement. As part of the agreement – circulated among the group by email – the parties intended that Messrs. Schroeder, Bocra, Stroy, and Cohen would not develop or work on or cause or assist another to develop or work on an entity reasonably related to the purposes of RDV or Skoopwire. Mr. Cohen refused to sign the liquidation agreement, but nevertheless assured Mr. Schroeder on July 1, 2008, "I have absolutely NO interest in PROFITING from your specific design work on Skoopwire." The parties never executed the agreement and www.Skoopwire.com was never officially released to the public.

Thereafter, Mr. Cohen abandoned RDV and SMA, while Mr. Schroeder continually contemplated how he could make use of his work product. SMA, like RDV, was never formally dissolved. By then, Mr. Schroeder had devoted almost four years of his life on Rendezvoo.com and Skoopwire.com and contributed the most money to the venture, yet never netted any compensation for his time and efforts.

In 2009, the year after Mr. Cohen caused the deadlock in RDV/SMA, Mr. Cohen supplied Mr. Schroeder's ideas and applications to entrepreneurs Ben Silbermann (Mr. Silbermann) and Evan Sharp (Mr. Sharp), both of whom had the ability to perform the technical aspects of Mr. Schroeder's ideas. Mr. Cohen had met Mr. Silbermann and Mr. Sharp at a business school competition at New York University. Mr. Silbermann, along with Paul Sciarra (Mr. Sciarra), had, in September 2008, funded Cold Brew Labs, Inc., a mobile shopping company, and were in the process of developing a mobile shopping product called Tote, a collection of catalogs that could be browsed on an Apple iPhone. In early 2009, Cold Brew Labs was identifying itself as a mobile shopping startup.

But by early 2010, with Mr. Cohen's involvement, Cold Brew Labs went from being a mobile shopping startup to developing "social commerce applications" to make "curating and sharing collections of products dead simple." Messrs. Silbermann, Sharp, and Sciara knew the idea given to them by Mr. Cohen was not Mr. Cohen's.

After Pinterest became publicly available, persons familiar with Mr. Schroeder's ideas and Rendezvoo.com advised Mr. Schroeder about the many similarities between the two websites; it did not take long for Mr. Schroeder to confirm what he had been told. Pinterest was nearly exactly what Mr. Schroeder conceived as RDV version 2. As enumerated in the complaint, the various key similarities between Mr. Schroeder's RDV version 2 and Mr. Cohen's subsequent Pinterest site could not be more apparent.

At the time Pinterest became publicly available, Mr. Schroeder did not know, nor could have known, that Mr. Cohen was in any way involved with Pinterest. It was not until March 2012 that Mr. Schroeder learned about Mr. Cohen's theft of Mr. Schroeder's ideas from an article entitled "Pinterest's First Investor Explains the Secret to the Startup's Success." In the article, Mr. Cohen brags, "I was Pinterest's first investor." Mr. Cohen also claims that he did not know where the concept of pinning Boards came from, but would "imagine" Mr. Silbermann "saw customers/women needing to have a contrast of all the things they were buying organized," which "lent itself naturally to boards." Mr. Cohen also wrote a book in which he is quoted as saying "Thanks to Pinterest's incredible success, I may see my initial investment multiplied by a thousand or more." The website for New York Angels, Inc. (NYA) (www.newyorkangels.com), the firm Mr. Cohen operated through in his early dealings with Mr. Schroeder, lists Pinterest as being added to the firm's portfolio in 2009. Pinterest's website, essentially RDV version 2, was launched in March 2010.

Discussion

On a motion to dismiss for failure to state a cause of action, the court accepts all factual allegations pleaded in plaintiff's complaint as true, and gives plaintiff the benefit of every favorable inference. CPLR 3211 (a) (7); *Sheila C. v Povich*, 11 AD3d 120 (1st Dept 2004). The court must determine whether "from the [complaint's] four corners[,] 'factual allegations are discerned which taken together manifest any cause of action cognizable at law." *Gorelik v Mount Sinai Hosp. Ctr.*, 19 AD3d 319 (1st Dept 2005) (quoting *Guggenheimer v Ginzburg*, 43 NY2d 268, 275 (1977)). Vague and conclusory allegations are not sufficient to sustain a cause of action. *Fowler v American Lawyer Media, Inc.*, 306 AD2d 113 (1st Dept 2003).

I. Misappropriation of Trade Secrets

To state a trade secret misappropriation claim, plaintiff must demonstrate "(1) that it possessed a trade secret and (2) that the defendant is using the trade secret in breach of an agreement, confidence, or duty, or as a result of discovery by improper means." *Shaw Creations Inc. v Galleria Enters., Inc.*, 2010 WL 4156452, *7 (NY Sup Ct Oct. 8, 2010) (quoting *Integrated Cash Mgmt. Servs. Inc. v Digital Transactions Inc.*, 920 F2d 171, 173 (2d Cir 1990)). Further, a trade secret must be a "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 how to use it." *Ashland Mgmt. Inc. v Janien*, 82 NY2d 395, 406 (1993); Restatement of Torts § 757 cmt. b (1939). Finally, "there are six factors that may be considered in determining whether information qualifies as a trade secret: (1) the extent to which the information is known outside of [the] business; (2) the extent to which it is known by employees and others involved in the [the] business; (3) the extent of measures taken by [the business] to guard the secrecy of the information; (4) the value of the information to [the

business] and [its] competitors; (5) the amount of effort or money expended by [the business] in developing the information; (6) the ease or difficulty with which the information could be properly acquired or duplicated by others." *Wiener v Lazard Freres & Co.*, 241 AD2d 114, 124 (1st Dept 1998).

Publicly available information cannot constitute a trade secret. *Ashland* at 407-08 (holding that a "trade secret must first of all be secret"). In fact, failure to allege precautionary measures to keep alleged trade secret information secret will result in dismissal. *Precision Concepts, Inc. v Bonsanti*, 172 AD2d 172 (2d Dept 1991). Once a website enters the public domain, its features and functionality cannot constitute a trade secret. *Plasmanet, Inc. v Apax Partners, Inc.*, 6 Misc 3d 1011(A) (NY Sup Ct 2004).

Vague business ideas cannot constitute trade secrets. *Walker v Univ Books, Inc.*, 602 F2d 859, 864 (9th Cir 1979). For example, *Walker v Univ Books, Inc.* held that "plaintiff's claimed trade secrets, consisting of improvements to a set of cards such as using higher quality stock, brighter colors, rounded corners, and the like were too vague and obvious to be protected." Undeveloped ideas, business goals, and new product ideas are not protectable as trade secrets. *Hudson Hotels Co. v Choice Hotels Int'l.*, 995 F2d 1173, 1177 (2d Cir 1993); *LinkCo, Inc. v Fujitsu LTD.*, 230 F Supp 2d 492, 500 (SDNY 2002); *Forest Labs. Inc. v Lowey*, 218 USPQ 646, 657 (Sup Ct Westchester Co 1982). Additionally, the fact that information is secret does not automatically grant it trade secret protection. *Wiener* at 124.

While some jurisdictions have held that focus group results are trade secrets, there is no New York precedent regarding focus groups as trade secrets. *See I-Sys Inc. v Softwares, Inc.*, 2004 WL 742082, *13-14 (D. Minn. Mar. 29, 2004, No. CIV 02-195) (finding that the specific results of empirical studies to determine which feature sets are appropriate to resolve given real-

world problems as applied to protected software, best business practices incorporated into specific software, and field discussions about the theory behind the future sets and resolutions of the problems, how end-users perceive issues and how to match the program to end-user expectations are all, individually and jointly, trade secrets); *Lucini Italia Co. v Grappolini*, 2003 WL 1989605, *3,18 (N.D. Ill. Apr. 28, 2003, No. 01-C-6405) (holding that market research and focus groups on product names, bottle shapes and sizes, marketing approaches in excess of $300,000 constituted a protectable trade secret). If focus group results merely consist of business goals and new product ideas, they cannot constitute trade secrets. *Hudson Hotels* at 1177; *LinkCo* at 500. Further, the fact that focus group information is kept secret does not automatically grant it trade secret protection. *Wiener* at 124.

Plaintiffs' technology information was publically available and therefore is not a trade secret. RDV version 1 was released to the public in 2006. This included, at least, a bulletin board system. RDV version 2 was "alpha released" to "the existing user community" in August 2006. In May 2007, the RDV website was publicly available on the internet and had a community of "over 5,000 users." Plaintiff nevertheless argues that it possessed trade secrets as a matter of law. Plaintiff cites *Q-Co Industries*, which held that "computer software, or programs, are protectable under the rubric of trade secrets because 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 and operation of which, in unique combination, affords a competitive advantage and is a protectable secret." *Q-CO Industries, Inc. v Hoffman*, 625 F Supp 608 (SDNY 1985). However, *Q-Co Industries* involved a patented software program, which differs significantly from plaintiff's non-patented website.

Plaintiffs' business management information does not constitute a trade secret because "business management information" is a vague allegation. Plaintiffs claim as business management information that, "Mr. Cohen was privy to the anticipated use of the sites and the target markets and demographics." The anticipated use of the sites and the target markets and demographics fall under the rubric of undeveloped ideas, business goals, and new product ideas which are not protectable as trade secrets. *LinkCo* at 500. Plaintiffs also allege that, "as Chairman and CEO, Mr. Cohen also was aware that everyone involved in RDV/Skoopwire intended that the information was to be kept confidential and that, in particular, it would not be used to develop or assist another to develop a business with similar goals and business models." However, the fact that information is secret does not automatically grant it trade secret protection. *Wiener* at 124.

The focus group result information is not a trade secret. Plaintiffs allege that "beginning in July 2007 and continuing through October 2007, the parties tested the Skoopwire.com website with family members, friends and others. Skoopwire compiled and used this information to further develop and refine the website." Such information falls under the rubric of vague future business goals that are not protectable as trade secrets. *LinkCo* at 500.

Plaintiffs' claim for misappropriation of a trade secret thus fails for not alleging an actual trade secret.

Finally, the claim for idea misappropriation was not included in the complaint and therefore cannot stand. *See MediaXposure LTD. (Cayman) v Omnireliant Holdings, Inc.*, 29 Misc 3d 1215(A) (NY Sup Ct 2010) (Holding that a party cannot amend its complaint with a new claim via an opposition brief).

II. Breach of Fiduciary Duty

Substantively, because the companies involved are both Delaware entities, Delaware law governs plaintiffs' breach of fiduciary duty claim. *See e.g. Hart v Gen. Motors Corp.*, 129 AD2d 179, 182-83 (1st Dept 1987) (*citing Diamond v Oreamuno,* 24 NY2d 494, 503-04(1969)); *Katz v Emmett*, 226 AD2d 588, 589 (2d Dept 1996); *Finkelstein v Warner Music Group Inc.*, 32 AD3d 344, 345 (1st Dept 2006). Section 801(a) of the New York Limited Liability Company Law states that "the laws of the jurisdiction under which a foreign limited liability company is formed govern its organization and internal affairs and the liability of its members and managers." NY Limited Liability Company Law § 801.

To prevail on a breach of fiduciary duty claim, plaintiffs must show "an actual, existing fiduciary relationship between the plaintiff and the defendants at the time of the alleged breach." Omnicare, Inc. v NCS Healthcare, Inc., 809 A2d 1163, 1169 (Del Ch 2002).

Under both NY and Delaware law, officers of a corporation owe fiduciary duties to the corporation and shareholders in a closely held corporation. *Gantler v Sephens*, 965 A2d 695, 708-09 (Del. 2009); *Brunetti v* Musallam, 11 AD3d 280, 281 (1st Dept 2004). Such duties cease when an individual leaves the entity. *In re Walt Disney Co. Derivative Litig.*, 907 A.2d 693, 758 (Del. Ch. 2005); *Dionisi v DeCampli*, 1995 WL 3938536, *10, 25-26 (Del Ch Jun. 28, 1995, No. 9425) (Holding that an officer's resignation was sufficient to find dissolution, even without a formal dissolution agreement when the resignation is clear and unambiguous). In fact, an officer is permitted to compete with the corporation after he leaves the company. *Dionisi* at *27.

Plaintiffs do not sufficiently claim a fiduciary duty at the time of the alleged breach. Mr. Cohen allegedly breached his fiduciary duties by misusing and misappropriating trade secrets, which did not allegedly occur until 2009, a year after Mr. Cohen abandoned plaintiffs.

Any fiduciary duty Mr. Cohen had towards plaintiffs ended when Mr. Cohen abandoned RDV and SMA. Plaintiffs argue that because the company was never formally dissolved and because Mr. Cohen did not sign a liquidation agreement, Mr. Cohen remains the CEO and continues to owe plaintiffs a fiduciary duty. However, *Dionisi* found that a formal dissolution agreement is not necessary to find abandonment so long as the abandonment is clear and unambiguous. *Dionisi* at *27. Mr. Cohen's abandonment was clear and unambiguous; Mr. Cohen has not worked with plaintiffs since early 2008 when he allegedly deadlocked and abandoned the project. Plaintiffs argue that a former director of a company can be found guilty of breach of fiduciary duty. *BelCom, Inc. v Robb*, 1998 WL 229527 (Del Ch Apr, 28, 1998, No. CIV A 14663). In *BelCom, Inc v Robb*, defendant's breach began while defendant was still the director and continued after he left. *Id.* Mr. Cohen, however, did not allegedly steal trade secrets until after abandoning plaintiffs.

Plaintiffs do not sufficiently claim the presence of a fiduciary relationship at the time of the alleged breach. Therefore, the plaintiffs' fifth cause of action for breach of fiduciary duty against Mr. Cohen is dismissed.

III. Aiding and Abetting Breach of Fiduciary Duty

To establish aiding and abetting breach of a fiduciary duty, plaintiffs must establish: "(1) a breach by a fiduciary of obligations to another, (2) that the defendant knowingly induced or participated in the breach, and (3) that plaintiff suffered damage as a result of the breach." *Kaufman v Cohen*, 307 AD2d 113 (1st Dept 2003). However, a claim for aiding and abetting breach of fiduciary duty is dependent upon the underlying breach of fiduciary duty. *Marino v Grupo Mundial Tenedora, S.A*, 810 F Supp 2d 601, 613 (SDNY 2011).

Because this court has dismissed the breach of fiduciary duty claim, plaintiffs' sixth cause of action alleging aiding and abetting breach of fiduciary duty against Pinterest must also fail.

IV. Promissory Estoppel

Under NY Law, a promissory estoppel claim requires: "(1) a clear and unambiguous promise, (2) reasonable and foreseeable reliance by the party to whom the promise is made, and (3) an injury sustained in reliance on that promise." *Braddock v Braddock*, 60 AD3d 84, 95 (1st Dept 2009).

Plaintiffs sufficiently allege that Mr. Cohen made a clear and unambiguous promise in an email sent on July 1st, 2008, not to take Mr. Schroeder's ideas underlying Skoopwire.com for his own benefit. The relevant part of the email from Mr. Cohen to Mr. Schroeder stated "I have absolutely NO interest in PROFITING from your specific design work on Skoopwire." Mr. Cohen argues that the email does not identify a duty independent of the operating agreement. *See Brown v Brown*, 12 AD3d 176, 176-77 (1st Dept 2004) (dismissing promissory estoppel claim because plaintiff failed to identify a "legal duty... arising out of circumstances extraneous to, and not constituting elements of, the contract itself."). The email does identify a duty independent of the operating agreement because after the parties abandoned the company the operating agreement no longer governs the parties conduct. *See Dionisi* at 25-26 (Holding that an officer's resignation was sufficient to find dissolution, even without a formal dissolution agreement when the resignation is clear and unambiguous). Additionally, the email was in response to multiple requests to sign a liquidation agreement, which would be separate from the operating agreement.

Plaintiffs sufficiently claim that Mr. Schroeder relied on Mr. Cohen's email. Specifically, plaintiffs allege that Mr. Schroeder "did not further implement his own ideas" immediately, although he had plans to in the future, relying on Mr. Cohen's agreement not to pursue or capitalize on Mr. Schroeder's ideas. Mr. Schroeder did not think it was urgent to develop the ideas because Mr. Schroeder was acting in reliance on Mr. Cohen's promise. Mr. Cohen attempts to defeat this claim by arguing that such reliance was not actual and therefore not sufficient. *Skillgames, LLC v Brody*, 1 AD3d 247, 250-51 (1st Dept 2003). The *Skillgames* court dismissed a promissory estoppel claim for failure of the plaintiff to allege a reasonable claim of reliance on the plaintiff's promise of continued employment since, by the terms of his employment agreement, he was free to unilaterally terminate his employment at any time. *Id.* *Skillgames* was reversed and therefore does not help defendant's argument. *Id.* Additionally, unlike in *Skillgames*, the parties here were not bound by any agreement stating explicitly that Mr. Cohen could profit from plaintiffs ideas.

Plaintiffs sufficiently allege an injury resulting from reliance on Mr. Cohen's promise. Plaintiffs allege that Mr. Schroeder continually contemplated how to make use of his ideas and work product, but did not act quickly, because he did not foresee that Mr. Cohen would develop his ideas with Pinterest. Additionally, plaintiffs allege that Mr. Cohen ignored several requests from Mr. Schroeder to sign a liquidation agreement not to develop, pursue, or work on any of the ideas revealed while working with RDV and SMA. (Cmplt ¶53).

Plaintiffs sufficiently allege promissory estoppel against Mr. Cohen to withstand a motion for dismissal. Mr. Cohen made a clear and unambiguous promise in an email on July 1, 2008. Plaintiff relied on that email and was consequently injured.

V. Misappropriation of Skills and Expenditures

To make a claim of misappropriation of skills and expenditures, plaintiffs must allege "(1) investment of labor, skill or expenditure, (2) that the information was misappropriated in bad faith, (3) and used for defendant's own benefit." *LinkCo, Inc. v Fujitsu Ltd.*, 230 F Supp 2d 492, 501-02 (SDNY 2002); *Metropolitan Opera Ass'n v Wagner-Nichols Recorder Corp.*, 199 Misc 786, 794-96 (NY Sup Ct 1950). Such claims are traditionally called unfair competition. *Id.* Unfair competition claims can stand even when a misappropriation of trade secret claim fails. *See Continental Dynamics Corp. v Kanter*, 64 AD2d 975 (2d Dept 1978) (even where an employee's physical taking of an employer's customer lists does not rise to the level of trade secrets, it may nevertheless form the basis for a cause of action for unfair competition); *Demetriades v Kaufmann*, 698 F Supp 52, 526 (SDNY 1988) (considering misappropriation of skills even where misappropriation of trade secrets on the same facts has been considered and dismissed). Finally, bad faith requires the existence of a confidential or fiduciary relationship and can consist of theft, deception, bribery, or coercion. *See J. Racenstein & Co., Inc. v Wallace*, 1999 WL 269911, *8 (SDNY May 4, 1999) ("[P]laintiff must allege that defendant misappropriated the fruit of plaintiff's labors and expenditures by obtaining access to a business idea of plaintiff either through fraud or deception, or an abuse of a fiduciary relationship."); *Werlin v Reader's Digest Ass'n, Inc.*, 528 F Supp 451, 464 (SDNY 1981) (dismissing Plaintiff's New York unfair competition claim because there was neither a "fiduciary or confidential relationship" between the parties).

Plaintiffs sufficiently allege that plaintiff invested labor, skill, and expenditures by stating that Mr. Schroeder devoted almost four years of his life and thousands of working hours into the creation of Rendezvous and Skoopwire.

Plaintiffs sufficiently allege that their investment in skill, expenditures, and labor was misappropriated in bad faith by Mr. Cohen and NYA, but not by Pinterest. Plaintiffs allege that the investment in skill, labor, and expenditures was misappropriated by Mr. Cohen when he took plaintiffs' ideas to the Pinterest founders. Plaintiffs allege that Mr. Cohen acted in bad faith by stealing ideas when he promised he would not. Plaintiffs allege that Mr. Cohen, as chairman and CEO of both RDV and Skoopwire, while acting as an agent of NYA, knew that the proprietary information he acquired from plaintiffs should be kept confidential. Plaintiffs further allege that Mr. Cohen knew such information was to be kept confidential because Mr. Cohen signed the operating agreement, refused to sign a liquidation agreement, and wrote an email promising that he would not profit from plaintiffs' ideas. Plaintiffs however did not sufficiently allege bad faith against Pinterest. Plaintiffs and Pinterest have no relationship; in fact RDV and SMA did not conduct business at the same time as Pinterest. Additionally, Mr. Cohen allegedly gave the information to Pinterest voluntarily; therefore, there was no indication or statement in the complaint alleging theft, espionage, bribery, coercion or trickery on the part of Pinterest.

Plaintiffs sufficiently allege that Mr. Cohen's misappropriation of Mr. Schroeder's labor, skill, and expenditures was for Mr. Cohen and NYA's own benefit and gave defendants an unfair advantage. NYA is allegedly also responsible because Mr. Cohen was at all times acting in furtherance of NYA business and within the scope of his authority as an NYA officer. NYA exists "to provide capital to entrepreneur's starting new businesses." Mr. Cohen was affiliated with NYA and plaintiffs met with Mr. Cohen to look for capital. NYA's success occurs through the investments made by its members. For example, NYA touted the success of Pinterest with a tombstone on its website. NYA is not just a clearinghouse (independent consortium of angel investors) and it does not matter that it is a not-for-profit entity.

Plaintiffs do not sufficiently allege such investment information was used for Pinterest's benefit because plaintiffs allege no fiduciary or confidential relationship between plaintiffs and Pinterest.

Plaintiffs allege facts sufficient to withstand a motion to dismiss for its third claim of misappropriation of skills and expenditures. Plaintiffs sufficiently claim that Mr. Cohen and NYA, but not Pinterest, misappropriated Mr. Schroeder's investment of labor, skill, and expenditures in bad faith, for Mr. Cohen and NYA's own benefit.

VI. Unjust Enrichment

To establish an unjust enrichment claim, plaintiff must show that "(1) the defendant was enriched, (2) at the 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." *Anesthesia Assocs. of Mount Kisco, LLP v N. Westchester Hosp. Cir.*, 59 AD3d 473, 481 (2d Dept 2009); *Medtech Prods. Inc. v Ranir, LLC*, 596 F Supp 2d 778, 817 (SDNY 2008)(applying NY law). Unjust enrichment is only available "in unusual situations when, though the defendant has not breached a contract nor committed a recognized tort, circumstances create an equitable obligation running from the defendant to the plaintiff." *Corsello v Verizon NY Inc.*, 18 NY3d 777, 790-91 (2012). An unjust enrichment claim is not available where it simply duplicates a contract or tort claim, such as misappropriation. *Id.* (Citing *Clark-Fitzpatrick, Inc. v Long Is. R.R. Co.*, 70 NY2d 382, 388-389 (1987)); *Samiento v World Yacht Inc.*, 10 NY3d 70, 81 (2008); *Town of Wallkill v Rosenstein*, 40 AD3d 972 (2d Dept 2007). Finally, an unjust enrichment claim "will not be supported unless there is a connection or relationship between the parties that could have caused reliance or inducement on the plaintiff's part." *Georgia Malone & Co. Inc. v Rieder*, 86 AD3d 406, 408 (1st Dept 2011).

The unjust enrichment claim must fail against Mr. Cohen and NYA because it is duplicative of the misappropriation of skills and expenditures claim.

The unjust enrichment claim fails against Pinterest because plaintiffs do not allege a relationship between the parties that could have caused reliance. Pinterest did not have any relationship with Mr. Schroeder, as Pinterest was created after RDV was abandoned. In the instant case, there is no indication that the plaintiffs' relied on the statements or actions of Pinterest, nor that Pinterest acted in any way to induce the plaintiffs to act to their detriment. Plaintiffs plead only that Pinterest knew that Mr. Cohen had gotten his ideas from elsewhere, not even that they were aware of Mr. Schroeder's existence.

The unjust enrichment claim is dismissed as duplicative of the misappropriation of skills and expenditures claim against Mr. Cohen and NYA. The unjust enrichment claim is dismissed against Pinterest for failure to state a claim because plaintiff alleges no connection or relationship between the parties.

Conclusion

Accordingly, it is hereby

ORDERED that the motion by Defendant Pinterest, Inc. to dismiss all of Plaintiff's claims against it is GRANTED, Causes of Action I (Unjust Enrichment), II (Misappropriation of Trade Secrets) and VI (Aiding and Abetting Breach of Fiduciary Duty) are dismissed in their entirety, Cause of Action III (Misappropriation of Skills and Expenditures) is dismissed as to Pinterest, and Pinterest is dismissed from the case; and it is further

ORDERED that the motion by Defendants Cohen and New York Angels, Inc. to Dismiss the claims against them is GRANTED in part as to Causes of Action I (Unjust Enrichment), II (Misappropriation of Trade Secrets) and V (Breach of Fiduciary Duty), and DENIED as to

Cause of Action III (Misappropriation of Skills and Expenditures), and IV (Promissory Estoppel); and it is further

ORDERED that Causes of Action I, II, V and VI are severed from the case, Defendant Pinterest, Inc. is dismissed from the case, and the remaining Causes of Action, III (as to Cohen and New York Angels), and IV (as to Cohen) shall continue; and it is further

ORDERED that the remaining defendants shall file an and serve an Answer to the Complaint within thirty (30) days of receiving Notice of Entry of this Decision and Order.

Dated: July 8, 2014

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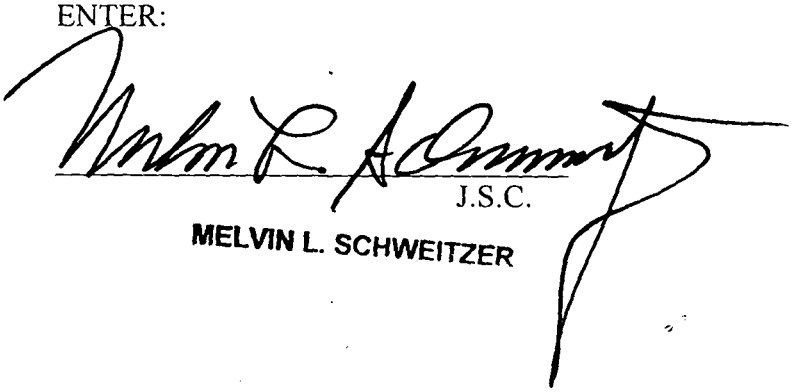

J.S.C.

MELVIN L. SCHWEITZER