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OF THE COMMITTEE ON OPINIONS

LARD-VID, LLC and VISUAL IMAGE  
DISPLAY UK, LTD.,

Plaintiffs,

v.

GROUND SUPPORT LABS, LLC,  
GROUND SUPPORT LABS, LTD, SHIVAM  
PARIKH, STEVE MARQUIS, MARINA  
GUDOVICH, MARTYN BARNETT, and  
SHIVAM PARIKH ENTERPREISES,

Defendants.

**SUPERIOR COURT OF NEW JERSEY**  
LAW DIVISION – BERGEN COUNTY

DOCKET NO. **BER-L-5929-20**

Civil Action

**OPINION**

**Argued: February 19, 2021**

**Decided: February 26, 2021**

**HONORABLE ROBERT C. WILSON, J.S.C.**

Joshua C. Gillette, Esq., and Stuart Kagen and Russell Bogart (*pro hac vice*) appearing on behalf of Plaintiffs Lard-VID, LLC and Visual Image Display UK, Ltd. (from Kagen, Caspersen & Bogart, PLLC)

Paul S. Doherty III, Esq., Jeremy B. Stein, Esq., and Kelly A. Zampino, Esq. appearing on behalf of Defendants Ground Support Labs, LLC, Martyn Barnett, Steve Marquis, Shivam Parikh, Shivam Parikh Enterprises, LLC, and Marina Gudovich (from Hartmann Doherty Rosa Berman & Bulbulia, LLC)

**PROCEDURAL HISTORY**

**THIS MATER** initially began on October 7, 2020, when Lard-VID, LLC, and Visual Image Display UK, Ltd. (“Plaintiffs”) filed a Complaint against Ground Support Labs, LLC, Ground Support Labs, Ltd., Shivam Parikh, Stave Marquis, Martyn Barnett and Shivam Parikh Enterprises, LLC (“Defendants”). In the Complaint, Plaintiffs alleged twelve causes of action, described in detail below. On December 18, 2020, Defendants filed the present motion for dismissal. Plaintiffs filed an Amended Complaint on February 8, 2021, containing 14 causes of action, and on February 9<sup>th</sup> the Plaintiffs responded with an opposition and cross-motion to amend the Complaint. The Court heard oral argument on this matter on February 19, 2021.

## **FACTUAL BACKGROUND**

**THE FACTS OF THIS CASE** arise out of Defendants' prior employment with Plaintiffs before the Defendants left and started their own companies doing similar work. Shivam Parikh and Steve Marquis served for many years as the President and Vice President of Sales of VID-Lard, LLC ("VID"), a digital signage & consumer engagement technology business. In such capacities, Parikh and Marquis had access to all of VID's confidential and trade secret information such as business plans, customer information, financial information, and business opportunities under development. VID never issued or required Defendants to be bound by any "non-compete agreements," but Plaintiffs nonetheless brought suit against the Defendants after leaving Plaintiffs' employ claiming Trade Libel, Fraud, Aiding and Abetting Breach of Fiduciary Duty, Computer Related Offenses, Trade Secrets or Misappropriation of Confidential Information, Tortious Interference, Breach of Fiduciary Duty, and Faithless Servant, as well as Misappropriation of Corporate Opportunities, Unjust Enrichment and Civil Conspiracy.

Defendants Shivam Parikh, Steve Marquis, and Marina Gudovich worked for Plaintiff VID, in Bergen County. Defendant Martyn Barnett, who is a British Citizen and lives in London, England, worked for Plaintiff Visual Image Display UK, Ltd. ("VID-UK"), a company located in London. On February 5, 2020, Parikh formed Defendant Ground Support Labs, LLC ("GSL"), and on April 4, 2020, Defendant Ground Support Labs, Ltd. was formed under the laws of England and Wales ("GSL-UK"). Parikh, Marquis, and Gudovich currently work for GSL and Barnett works for GSL-UK in London.

While Plaintiffs concede that there was no "non-compete agreement," restrictive covenant or such other employment restraint, they nonetheless assert that the Defendants have attempted to convert Plaintiffs' contracts. Plaintiffs explain Defendants' purported scheme by

alleging misappropriated funds—by the loss of a \$2.6 million contract for some client who the Plaintiffs do not identify—emails sent from work email accounts to personal accounts preceding the Defendants’ departure, and deletion of data that belonged to VID or VID-UK. Plaintiffs do not however explain exactly what data was taken or wrongfully used by Defendants.

Plaintiffs assert that Parikh “caused VID to contract” with Shivam Parikh Enterprises, LLC (“SPE”), and then upon Parikh’s resignation, Plaintiffs allege SPE over-charged and engaged in self-dealing to their detriment for the last six years. These actions taken by Parikh resulted in Plaintiffs twelve-part cause of action (listed above).

For the reasons set forth below, Defendant’s Motion to Dismiss is hereby **PARTIALLY GRANTED and PARTIALLY DENIED**, and Plaintiff’s Cross-Motion to Amend the Complaint is **PARTIALLY GRANTED AND PARTIALLY DENIED**.

**MOTION TO DISMISS STANDARD UNDER RULE 4:6-2(e)**

On a motion to dismiss pursuant to R. 4:6-2(e), the Court must treat all factual allegations as true and must carefully examine those allegations “to ascertain whether the fundament of a cause of action may be gleaned even from an obscure statement of claim. . . .” Printing Mart-Morristown v. Sharp Elec. Corp., 116 N.J. 739, 746 (1989). After a thorough examination, should the Court determine that such allegations fail to state a claim upon which relief can be granted, the Court must dismiss the claim. Id. It is simply not enough for a party to file mere conclusory allegations as the basis of its complaint. See Scheidt v. DRS Techs., Inc., 424 N.J. Super. 188, 193 (App. Div. 2012); see also Camden Cty. Energy Recovery Assocs., L.P. v. New Jersey Dept. of Env’tl. Prot., 320 N.J. Super 59, 64 (App. Div. 1999), aff’d o.b. 170 N.J. 246 (2001) (“Discovery is intended to lead to facts supporting or opposing an asserted legal theory; it is not designed to lead to formulation of a legal theory.”).

Under the New Jersey Court Rules, a complaint may only be dismissed for failure to state a claim if, after an in-depth and liberal search of its allegations, a cause of action cannot be gleaned from even an obscure statement in the Complaint, particularly if additional discovery is permitted. R. 4:6-2(e); see Pressler, Current N.J. Court Rules, Comment 4.1.1. to Rule 4:6-2(e), at 1348 (2010) (citing Printing Mart, 116 N.J. at 746). Thus, a Court must give the non-moving party every inference in evaluating whether to dismiss a Complaint. See NCP Litigation Trust v. KPMG, LLP, 187 N.J. 353, 365 (2006); Banco Popular No. America v. Gandi, 184 N.J. 161, 165-66 (2005); Fazilat v. Feldstein, 180 N.J. 74, 78 (2004). The “test for determining the adequacy of a pleading [is] whether a cause of action is suggested by the facts.” Printing Mart, 116 N.J. at 746. However, “a court must dismiss the plaintiff’s complaint if it has failed to articulate a legal basis entitling plaintiff to relief.” Sickles v. Carbot Corp., 379 N.J. Super. 100, 106 (App. Div. 2005).

### **RULES OF LAW AND DECISION**

Defendant’s Motion to Dismiss is granted as to some causes of action: (1) there is no personal jurisdiction in New Jersey over Martyn Barnett and GSL-UK, (2) the Complaint fails to state a claim on several causes of action—Counts 2, 3, 4, 9, and 12—that require pleading with specificity, and (3) some of the remaining causes of action—Count 1, under the Computer Related Offenses Act and Count 7 under the Trade Secrets Act—also fail to state a claim. Defendants’ Motion to Dismiss as to the remaining causes of action is denied. The Plaintiffs’ Cross-Motion to Amend is partially granted to allow Plaintiffs to file an Amended Complaint in accordance with the Court’s present ruling, but partially denied in that the Plaintiffs’ attached Amended Complaint fails to conform with this Opinion.

**I. There is No Personal Jurisdiction in New Jersey Over Martyn Barnett and Ground Support Labs, Ltd.**

There is no personal jurisdiction in New Jersey over Martyn Barnett or GSL-UK because both are domiciled in the United Kingdom, and there is no specific personal jurisdiction because neither Barnett nor GSL-UK purposely availed themselves of the privilege of conducting activities in New Jersey.

The standard for establishing general jurisdiction is “fairly high,” and requires that “the defendant’s contacts be of the sort that approximate physical presence.” Dutch Run-Mays Draft, LLC v. Wolf Block, LLP, 450 N.J. Super. 590, 600 (App. Div. 2017); see also Pullen v. Galloway, 461 N.J. Super. 587, 597 (App. Div. 2019) (“For general jurisdiction to attach, a defendant’s activities must be so continuous and systematic as to render it essentially at home in the forum State.”). In order to exercise general personal jurisdiction over an individual defendant, the individual must be domiciled in New Jersey. To be domiciled in New Jersey the Defendant must maintain their permanent home in New Jersey, and for a corporation, the domicile is where it is incorporated or has its principal place of business. See Dutch Run-Mays Draft, 450 N.J. Super. at 602.

Specific jurisdiction, on the other hand, is available when the cause of action arises directly out of Defendant’s contacts with the forum state. See Pullen, 461 N.J. Super. at 597. “When the defendant is not present in the forum state, it is essential that there be some act by which the defendant purposefully avails himself of the privilege of conducting activities within the forum state, thus invoking the benefit and protection of its laws.” Dutch Run-Mays Draft, 450 N.J. Super. at 596-97. The Court must examine whether a non-resident Defendant has purposefully availed itself of the privilege of conducting activities within the forum, such that the Defendant can reasonably anticipate being hauled into the forum. Id. Absent such purposeful

availability, exercising jurisdiction over the defendant violates constitutional due process. Pullen, 461 N.J. Super. at 596-97.

Here, there is no general jurisdiction over Barnett or GSL-UK because Barnett lives and works in London, England, and GSL-UK was formed under the laws of England and Wales. GSL-UK is located in London, and has no offices or employees in New Jersey, or anywhere else in the United States.

There is also no specific jurisdiction because the causes of action asserted against Barnett and GSL-UK do not arise out of any alleged contacts with New Jersey, and neither of them is alleged to have purposefully availed themselves of the privilege of conducting activities in New Jersey. Barnett served as the Managing Director of Plaintiff VID-UK, which is a company registered under the law of England and had no offices or employees in New Jersey or anywhere else in the United States, and Barnett was not an employee of VID in New Jersey. Barnett then left VID-UK and was appointed Managing Director of GSL-UK, and Barnett is not an employee of GSL in New Jersey. GSL-UK is a company registered under the laws of England and GSL-UK maintains a register address located at 85 Great Portland Street, First Floor, London W1W 7LT, and GSL-UK has no offices or employees in New Jersey, or anywhere else in the United States. The Complaint alleges that Barnett breached his duty to VID-UK in London, to manage that business, in Europe. These Defendants have no relevant contacts with New Jersey, let alone the minimum contacts required to justify exercising jurisdiction over them in New Jersey, and therefore all claims against them must be dismissed under Rule 4:6-2(b).

## **II. The Complaint Fails to State a Claim for Fraud or Trade Libel.**

The Complaint fails to state a claim for fraud or trade libel because both of these causes of action require a heightened pleading standard and the Plaintiffs failed to plead the facts underlying both of these causes of action with specificity with either a defamatory statement or a

fraudulent statement. See R. 4:5-8(a) (“In all allegations of misrepresentation [and] fraud ... particulars of the wrong, with dates and items if necessary, shall be stated insofar as practicable.”); see also Darakjian v. Hanna, 366 N.J. Super. 238, 248-49 (App. Div. 2004) (stating that defamation actions require plaintiffs to plead their cause of action with greater level of specificity).

To plead trade libel, the Complaint must allege a false statement concerning Plaintiff’s business, and to plead fraud, the Complaint must allege a false statement on which Defendants intended that Plaintiffs rely. See Mayflower Transit, LLC v. Prince, 314 F. Supp. 2d 362, 378 (D.N.J. 2004) (The elements of trade libel are: (1) publication; (2) with malice; (3) of false allegations concerning plaintiff’s property, product or business; and (4) special damages—pecuniary harm); Banco Popular N. Am. v. Gandi, 184 N.J. 161, 172-73 (2005) (“To establish common-law fraud, a plaintiff must prove: (1) a material misrepresentation of a presently existing or past fact; (2) knowledge or belief by the defendant of its falsity; (3) an intention that the other person rely on it; (4) reasonable reliance thereon by the other person; and (5) resulting damages.”). Thus, in order to meet the heightened pleading standard for the trade libel and fraud claims here, Plaintiffs were required to allege specifically the statements made by Defendants that serve as the basis of these claims, when they were made, and to whom. See Russo v. Nagel, 358 N.J. Super. 254, 269 (App. Div. 2003) (“In order to properly plead a claim for trade libel or slander the defamatory words, their utterer and the fact of their publication. A vague conclusory allegation is not enough.”).

With respect to trade libel, the Complaint alleges only that: (1) Defendants had been telling VID’s customers, business partners and suppliers that VID will be placed out of business and that it will not be able to fulfill its contracts; (2) Defendants had been telling VID’s suppliers that VID will be using other suppliers instead, and that they should partner with GSL; and, (3)

Defendants told Plaintiffs' customers that VID was going out of business, it only had three employees on payroll and that it was no longer capable of performing its contracts. These allegations do not meet the heightened pleading standard. The Complaint does not explain what the statements actually were, when they were said, or whom they were said to. The Complaint does not allege specific facts supporting the required elements of malice, falsity, or damages; instead, the Complaint just parrots the language of the cause of action. These vague allegations do not satisfy the pleading standard for libel claims. See Russo, 358 N.J. Super. at 269.

Similarly, with respect to the fraud claim, the only allegedly false statement mentioned in the Complaint is that "Parikh had represented to VID that he was providing the server space to VID as a pass-through cost." This allegation certainly does not meet the heightened pleading standard under Rule 4:5-8(a). The Complaint does not disclose what Parikh actually said, who he said it to, when he said it, and what medium he said it through (text, email, etc.). Plaintiffs do not claim to know the statement to be false, or that they even relied on it to their detriment. These allegations fail to meet the heightened pleading standard, and the claim must be dismissed.

The Complaint also asserts this same fraud claim against SPE, in addition to Parikh personally. The Complaint does not allege any false statement by SPE or any other conduct by SPE at all for any of the elements of a fraud claim. Even if the Complaint did allege a tort claim against SPE, that tort claim would be barred by the economic loss doctrine, which bars tort claims where the parties' relationship is governed by contract and the claim is for economic damage. See Saltiel v. GSI Consultants, Inc., 170 N.J. 297, 316 (2002) ("Under New Jersey law, a tort remedy does not arise from a contractual relationship unless the breaching party owes an independent duty imposed by law."). The Complaint alleges that VID's relationship with SPE was contractual, which means that Plaintiffs' fraud claim against SPE must be dismissed.

Therefore, the trade libel and fraud causes of action, Counts 9 and 12, must be dismissed under Rules 4:6-2(e) and 4:5-8(a).

### **III. The Complaint Fails to State a Claim for Aiding and Abetting Breach of Fiduciary Duty, Breach of Fiduciary Duty, and Faithless Servant.**

The heightened pleading standard of Rule 4:5-8(a) applies to claims for “breach of trust” as well. See Rule 4:5-8(a) (“In all allegations of ... breach of trust ... particulars of the wrong, with dates and items if necessary, shall be stated insofar as practicable.”). The claims for breach of trust include claims of breach of fiduciary duty, as well as claims of aiding and abetting breach of fiduciary duty. See Beaver v. Magellan Health Services, Inc., 433 N.J. Super. 430, 443 n.1 (App. Div. 2013) (“Also, it is apparent that plaintiff failed to allege a claim of breach of duty of good faith with the required specificity.”) (citing R. 4:5-8(a)); Pressler & Verniero, Current N.J. Court Rules, Rule 4:5-8 Cmt. 1.1 (noting that the heightened pleading standard applies to claims for breach of fiduciary duty). To state a claim for aiding and abetting breach of fiduciary duty, a plaintiff must allege specific facts satisfying the following elements: “(1) the existence of a fiduciary relationship, (2) a breach of the fiduciary’s duty, and (3) a knowing participation in that breach by the defendants who are not fiduciaries.” Scheidt v. DRS Technologies, Inc., 424 N.J. Super. 188, 209 (App. Div. 2012). Further, the Defendant must have “substantially assisted” the breaching party. See Cajoeco v. Bensi Enters., No. BER-L-3477-16, 2019 N.J. Super. Unpub. LEXIS 660, at \*48 (Law Div. Mar. 21, 2019) (citing Morganroth & Morganroth v. Norris McLaughlin & Marcus, P.C., 331 F.3d 406, 415 (3d Cir. 2003)).

The Complaint fails to allege specific facts to establish that GSL, GSL-UK, or SPE participated in, and substantially assisted, any breach of fiduciary duty. The Complaint only alleges that “GSL and GSL-UK ... participated in and induced those breaches of fiduciary duty,” and that “SPE participated in some of Parikh’s breaches of fiduciary duty.” These conclusory

allegations merely recite the elements of the cause of action, but they do not meet the heightened pleading standard for claims of aiding and abetting breach of fiduciary duty. Therefore, Count 3 must be dismissed.

Similarly, Faithless Servant must also be plead with particularity. See Scheidt, 424 N.J. Super. 188 (App. Div. 2012). In the Complaint, Plaintiffs only allege that the former employees breached their fiduciary duties by “failing to act in Plaintiffs’ best interests, misappropriating Plaintiffs’ trade secrets and confidential information, failing to return the trade secret and confidential information, and by using or disclosing that information for the benefit of themselves contrary to Plaintiffs’ best interests.” This conclusory allegation must fail because, as discussed above, the Complaint does not allege with particularity what information was taken or disclosed, and does not include facts as to where, when, who, etc. with respect to any alleged use of Plaintiffs’ data. The breach of fiduciary duty claim and the faithless servant claims, Count 2 and 4, must be dismissed for failure to state a claim.

#### **IV. The Complaint Fails to State a Claim for the Computer Related Offenses Act and the Trade Secrets Act.**

The Complaint fails to state a claim on the Computer Related Offenses Act and the Trade Secrets Act because Plaintiffs fail to include any information that the Defendants actually used any of the data which was allegedly taken, nor do they include information on how the Plaintiffs were damaged as a result. There is only one client that the Complaint alleges was taken from Plaintiffs. With respect to that client, the Complaint does not allege that Defendants used any data to compete with Plaintiffs. The Complaint generally alleges that the Defendant used confidential information and trade secrets to misappropriate a \$2.6 million project from Plaintiffs. However, the Complaint only specifies that Barnett forwarded documents relating to this project to a personal email account and Barnett’s receipt of emails at his VID email which

purports to show his affiliation with GSL generally and his working with GSL on a similar project. The Complaint does not allege that Barnett actually used any data from VID in competing with VID for this client and again is largely speculative and conclusory on this claim.

A claim under the Computer Related Offenses Act, N.J.S.A. 2A:38A-3, which is sometimes referred to as New Jersey's anti-hacking statute, requires the following two elements: (1) an actor must take or damage computer data without authorization, and (2) the Plaintiff must have been "damaged in business or property" as a result of the prohibited conduct. See N.J.S.A. 2A:38A-3 ("A person or enterprise damaged in business or property as a result of any of the following actions may sue [for] ... [t]he purposeful or knowing, and unauthorized altering, damaging, taking, or destruction of any data ....").

The New Jersey Trade Secrets Act, N.J.S.A. 56:15-1 et seq., provides a remedy for damages caused by misappropriation of trade secrets. In order to state a claim under the statute, a Plaintiff must allege that a trade secret was misappropriated, and that Plaintiff was damaged by the misappropriation. A trade secret is described as information that: "(1) Derives independent economic value, actual or potential, from not being generally known to, and not being readily ascertainable by proper means by other persons who can obtain economic value from its disclosure or use," and "(2) Is the subject of efforts that are reasonable under the circumstances to main its secrecy." N.J.S.A. 56:15-2.

Here, the Complaint does not allege facts to satisfy the elements of either statute. As for the Computer Related Offenses Act claim, the Complaint does not allege that as employees of Plaintiffs, the Defendants accessed any systems or data that they were not authorized to access, and the Complaint does not allege any hacking. The Complaint therefore fails to allege the access was "unauthorized" as required by statute. There is no allegation of a non-disclosure agreement, data access restriction agreement, or communication between the parties informing

Defendants that they were unauthorized to access some information. The Complaint only alleges that the Defendants individually and in conspiracy with each other, “engaged in a pattern of destroying and taking VID’s data without authorization.” The second element of the claim, requiring damages as a result of the alleged unauthorized action has also not been alleged in the Complaint. There is no allegation in the Complaint that the Defendants actually used any of the data allegedly taken and the Complaint only speaks of speculative future harm. Since the Complaint does not allege any damages as a result of any proscribed conduct under the statute, the claim under the Computer Related Offenses Act, Count 1, must be dismissed.

The Complaint also fails to state a claim under the New Jersey Trade Secrets Act, because the information fails to meet the definition of trade secret under the statute. Plaintiffs do not allege that they took any steps at all to prevent disclosure by Defendants, or even demand that Defendants not disclose the information. There is no allegation that Defendants signed any non-disclosure agreements, there is no allegation that Plaintiffs made any efforts to collect alleged confidential information from Defendants after their employment ended, and there is no allegation Plaintiffs asked Defendants to sign a non-disclosure agreement post-employment as a condition of any severance agreement or other post-employment arrangement. See Scherer Design Grp, LLC v. Schwartz, No. 18-cv-3540, 2018 WL 3613421, at \*4 (D.N.J. July 26, 2018), aff’d sub nom. Scherer Design Grp., LLC v. Ahead Engineering LLC, 764 Fed. App’x 147 (3d Cir. 2019) (holding that where “Plaintiff has not described any measures taken to ensure confidentiality, other than the assertion that the database is ‘only accessible to authorized staff ... and could only be accessed through [Plaintiff’s] secure Windows-based domain network and [Plaintiff]-supplied and configured computers, ... [t]he Court cannot conclude that Plaintiff has met its burden on this essential element” of a claim under the Trade Secrets Act).

The Trade Secrets Act claim must also be dismissed because Plaintiffs have not alleged any damages. See N.J.S.A. 56:15-4. The Complaint does not allege any actual instances of Defendants using any trade secrets to Plaintiffs detriment. Therefore, the claim under the Trade Secrets Act, Count 7, must be dismissed for failure to state a claim.

### **CONCLUSION**

For the aforementioned reasons, Defendant's Motion to Dismiss is hereby **PARTIALLY GRANTED and PARTIALLY DENIED** and Plaintiff's Cross-Motion to Amend the Complaint is **PARTIALLY GRANTED AND PARTIALLY DENIED.**