

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK

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FLORIDA MCB, LLC,	:	Index No. 652126/2020
	:	
Plaintiff,	:	
	:	(Schechter, J.)
- against -	:	
	:	Mot. Seq. No. 001
COLUMBIA CARE, LLC, BETTER-GRO	:	
COMPANIES, LLC, MICHAEL ABBOTT, and	:	
NICHOLAS VITA,	:	
	:	
Defendants.	:	
	:	
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NOTICE OF ENTRY

PLEASE TAKE NOTICE that attached is a true and correct copy of the Order of the Hon. Jennifer G. Schechter, J.S.C., dated September 9, 2020, and entered by the Office of the Clerk of New York County on September 9, 2020.

Dated: New York, New York
September 9, 2020

Respectfully submitted,

KASOWITZ BENSON TORRES LLP

By: /s/ Sarmad M. Khojasteh

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Attorneys for Plaintiff

**pro hac vice application to be submitted*

SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY

PRESENT: HON. JENNIFER G. SCHECTER PART IAS MOTION 54EFM

Justice

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INDEX NO. 652126/2020

FLORIDA MCB, LLC,

MOTION SEQ. NO. 001

Plaintiff,

- v -

COLUMBIA CARE, LLC, BETTER-GRO COMPANIES,
LLC, MICHAEL ABBOTT, NICHOLAS VITA,

ORDER - INTERIM

Defendants.

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The following e-filed documents, listed by NYSCEF document number (Motion 001) 10, 11, 12, 13, 14, 15, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31

were read on this motion to/for DISMISSAL

It is ORDERED that the prongs of defendants' motion seeking dismissal of the portion of the cause of action for misappropriation of trade secrets concerning how such trade secrets were allegedly used to operate the business, dismissal due to lack of a necessary party, and for a stay pending arbitration are DENIED. Pursuant to the July 28, 2020 interim order, "all other portions of the motion will be held in abeyance pending the conclusion of the arbitration and a decision on whether the award should be confirmed, and the parties will be directed to provide supplemental briefing at that time on the preclusive effect of the arbitration" (Dkt. 17).

Plaintiff has stated a claim for misappropriation of trade secrets (see Ashland Mgt. Inc. v Janien, 82 NY2d 395, 407 [1993]). Plaintiff alleges that after its joint venture with Sun Bulb did not come to fruition after their license application was denied, defendants partnered with Sub Bulb to obtain a license (an alleged breach, which is the subject of the arbitration) and then proceeded to operate the business using plaintiff's "(a) procedures and processes related to the cultivation, processing and dispensing of low-THC cannabis; (b) formulas related to the cultivation, processing and dispensing of low-THC cannabis; (c) scientific, technical and commercial expertise related to the cultivation, processing and dispensing of low-THC cannabis; and (d) materials describing devices, equipment and combinations of devices and equipment, including their use, related to the cultivation, processing and dispensing of low-THC cannabis and waste disposal" (Complaint ¶ 53). Defendants' contentions that these do not qualify for trade secret protection or that plaintiff did not take sufficient measures to keep its information secret are fact intensive questions that are not amenable to resolution on this motion to dismiss and require discovery (see Front, Inc. v Khalil, 103 AD3d 481, 483 [1st Dept 2013]; see also Zylon Corp. v Medtronic, Inc., 137 AD3d 462, 463 [1st Dept 2016]; Bitsight Tech., Inc. v SecurityScorecard, Inc., 143 AD3d 619, 621 [1st Dept 2016]). The confidential manner in which plaintiff's trade secrets were submitted in applying for the license permits a reasonable inference that the parties understood that this information was

to be kept secret. Defendants do not proffer any documentary evidence establishing that plaintiff agreed that its information could be used if plaintiff was not involved in the business.

Sun Bulb, with which plaintiff is arbitrating, is not a necessary party because it will not be inequitably affected by an award of damages against defendants in this case (*L-3 Communications Corp. v SafeNet, Inc.*, 45 AD3d 1, 10 [1st Dept 2007]; see *Tannenbaum Helpert Syracuse & Hirschtritt LLP v Deheng Law Offices*, 127 AD3d 564-65 [1st Dept 2015]). But even if it were, the court would excuse its joinder (see *L-3 Communications Corp*, 45 AD3d at 10-11).

Nor is there reason to extend the stay in this action since the portion of the trade secrets claim concerning the operation of the business (as opposed to procurement of the license) will not be adjudicated in the arbitration (*Datwani v Datwani*, 102 AD3d 616 [1st Dept 2013], citing *Somoza v Pechnik*, 3 AD3d 394 [1st Dept 2004]; see *Otto v Otto*, 110 AD3d 620, 621 [1st Dept 2013]). The scope of the stay, which encompasses the bulk of the action, ensures that the claims at issue in the arbitration will be decided there and afforded appropriate preclusive effect (see Dkt. 17).

Defendants' contention that the portion of the trade secrets claim concerning the operation of the business is being adjudicated in the arbitration is false -- it is not supported with any evidence and directly contradicts their admission to the contrary during the preliminary conference.

It is further ORDERED that the parties shall notify the court within one week of issuance of an arbitration award so a supplemental briefing schedule on this motion may be set. For now, the motion shall have a control date of November 20, 2020.

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9/9/2020
DATE

JENNIFER G. SCHECTER, J.S.C.

CHECK ONE:

CASE DISPOSED
GRANTED

DENIED

NON-FINAL DISPOSITION
DENIED IN PART

OTHER