

Corporate & Financial Weekly Digest

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Employment Contract Claims Survive Motion to Dismiss

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The U.S. District Court for the Southern District of New York denied defendants' motion to dismiss a complaint alleging that defendants improperly used confidential business information and solicited plaintiffs' employees and customers in contravention of defendants' employment agreements.

Plaintiff, Speedmark Transportation, is a "leading global provider of secure transportation services." Defendants are former employees who, while still employed at Speedmark, allegedly set up Everglory Logistics as an international freight forwarder that would compete directly with Speedmark. Thereafter, the individual defendants resigned, and solicited and induced a number of Speedmark employees to resign with them. After those resignations, two of the defendants solicited business from two long-time Speedmark customers.

Defendants' employment agreements barred them from directly or indirectly soliciting employees, service providers, independent contractors or customers for a period of 12 months from the termination of their employment with Speedmark.

Defendants moved to dismiss on the ground that the complaint failed to meet the "plausibility" pleading standard required by *Iqbal/Twombly* and Federal Rules of Civil Procedure (FRCP) 8(a)(2). The court disagreed, holding that the complaint was not required under Rule 8 to allege how Speedmark's clients were contacted or whether Everglory successfully stole business from Speedmark.

The court also declined to consider at the FRCP 12(b)(6) stage defendants' argument that their employment agreements were governed by and void under Massachusetts law. The court held that a choice-of-law determination was premature because the parties had not yet taken the discovery necessary for a context-specific "center of gravity" or "grouping of contacts" choice-of-law analysis.

Finally, the court declined to dismiss plaintiff's tort claims that closely tracked the breach of contract cause of action because the tort claims "would not expand the scope of discovery." (*Speedmark Trans., Inc., v. Mui et al.*, No. 11 Civ. 722, 2011 WL 1533042 (S.D.N.Y. Apr. 21, 2011))

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