

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK
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FRAMEWORK MI, INC.,

Plaintiff,

MEMORANDUM AND ORDER

- against -

20 Civ. 907 (NRB)

CVS HEALTH CORPORATION; CVS
PHARMACY, INC.; CAREMARK RX,
LLC; and PROCARE PHARMACY, LLC
D/B/A ENCOMPASS RX,

Defendants.

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NAOMI REICE BUCHWALD
UNITED STATES DISTRICT JUDGE

Plaintiff Framework MI, Inc. ("Framework") brought suit against defendants CVS Health Corporation ("CVS Health"), CVS Pharmacy, Inc. ("CVS Pharmacy"), Caremark RX, LLC ("Caremark"), and ProCare Pharmacy, LLC d/b/a Encompass RX ("ProCare") (collectively, "CVS") asserting claims of breach of contract, breach of the implied covenant of good faith and fair dealing, misappropriation of trade secrets, copyright infringement, and unjust enrichment arising from the alleged improper accessing and copying of Framework's proprietary software products. Before the Court is CVS's motion to dismiss Framework's non-copyright state law claims. For the following reasons, CVS's motion to dismiss is granted.

BACKGROUND

1. Factual Allegations

Framework is a healthcare consulting and technology company based in Ohio. First Amended Complaint, ECF No. 31 ("FAC") ¶ 2. The company is the owner of United States Copyright Registration No. TXU 002175958 for Cleo Suite® (the "Copyrighted Work"). Id. ¶ 28. The Copyrighted Work includes source code for digital interfaces that allow pharmacies to manage "patient information, new patient onboarding, prior authorization, and patient assistance programs." Id. ¶ 33. Framework licenses its products to pharmacies and can customize software systems for its clients to meet their individualized needs. Id.

In August of 2015, Framework and Encompass RX, LLC ("Encompass"), a specialty pharmacy based in Georgia (Id. ¶ 21), entered into a contract (the "Framework-Encompass Contract") whereby Framework agreed to provide its services to Encompass, including the licensing of its Copyrighted Work. Id. ¶ 45. The Framework-Encompass Contract provides that Encompass "will maintain in strict confidence any and all proprietary information . . . trade secrets . . . products or services . . . software, source code or documentation for software" designated as "Confidential Information" by Framework. Id. ¶ 46. "Confidential Information" includes the Copyrighted Work. Id. ¶ 47.

In May of 2018, while Encompass was still under contract with

Framework, CVS Health, a Delaware company which operates CVS pharmacy locations around the country, purchased Encompass through its subsidiary, ProCare. Id. ¶ 50. Around the time of the acquisition, Framework entered into discussions with CVS,¹ which was interested in procuring Framework's services, including use of the Copyrighted Work. Id. ¶¶ 51-52. In connection with these discussions, Framework and CVS entered into a Mutual Non-Disclosure Agreement (the "Framework-CVS NDA"),² which required, inter alia, that "each party maintain as confidential any information that was shared or disclosed to the other" in the course of the parties' discussions. Id. ¶ 55.

During these negotiations, Framework continued to provide its services to Encompass. Id. ¶ 58. According to the FAC, despite representations and assurances from CVS that the parties were close to reaching a deal on a software services contract, over time, it became apparent to Framework that CVS was dragging out negotiations "in order to buy time so that it could gain access to Framework's confidential and proprietary information." Id. ¶¶ 57, 59. Framework thereafter ended negotiations and subsequently discovered that in the midst of their discussions, CVS "improperly

¹ The FAC speaks of these negotiations as taking place between Framework and the CVS entities generally, but also specifically refers to discussions including employees of CVS Health and with CVS Pharmacy.

² A copy of the Framework-CVS NDA is provided by CVS, see Declaration of Michael Dixon, ECF No. 45 ("Dixon Decl."), Ex. B, and shows the contract as being between Framework and CVS Pharmacy and its affiliates, including Caremark.

accessed Framework's confidential, proprietary products [and] also improperly copied [the Copyrighted Work], including some of the most unique components of the product including (1) Framework's proprietary code for export from the pharmacy management software to Framework's server; and (2) the code for export/connectivity with onsite FedEx." Id. ¶ 61. CVS allegedly has begun using the software in connection with pharmacies in its network. Id. ¶ 64.

2. Procedural History

Framework filed its original complaint against CVS and Encompass on February 3, 2020. ECF No. 1.³ In response to a letter filed on April 20, 2020 (ECF No. 24) wherein defendants proposed to make a motion for a more definitive statement or, in the alternative, to dismiss the complaint in its entirety, the Court held a teleconference on April 23, 2020, after which Framework agreed to amend its complaint. The FAC was filed on May 27, 2020, and CVS filed an additional letter proposing to make a motion to dismiss, this time as to the non-copyright state law claims. ECF No. 34. The Court held a second teleconference on July 6, 2020, after which we granted CVS leave to file its motion. CVS filed its motion on September 4, 2020, and at the request of counsel, the Court heard oral argument on the motion on May 13, 2021.

³ Framework later voluntarily dismissed Encompass from the action. See ECF No. 40.

DISCUSSION

1. Legal Standard

To survive a motion to dismiss under Rule 12(b)(6), a complaint must plead "enough facts to state a claim to relief that is plausible on its face." Bell Atl. Corp. v. Twombly, 550 U.S. 544, 570 (2007). "A claim has facial plausibility when the plaintiff pleads factual content that allows the court to draw the reasonable inference that the defendant is liable for the misconduct alleged." Ashcroft v. Iqbal, 556 U.S. 662, 678 (2009). In determining whether a claim has facial plausibility, "we accept as true all factual statements alleged in the complaint and draw all reasonable inferences in favor of the non-moving party." McCarthy v. Dun & Bradstreet Corp., 482 F.3d 184, 191 (2d Cir. 2007). However, that tenet "is inapplicable to legal conclusions." Iqbal, 556 U.S. at 678.

2. Copyright Preemption

CVS's principal argument for the dismissal of Framework's state law claims is that these claims are preempted by the Copyright Act. Congress expressly designed a statutory framework of federal copyright preemption in section 301 of the Copyright Act. See 17 U.S.C. § 301. "The Copyright Act exclusively governs a claim when: (1) the particular work to which the claim is being applied falls within the type of works protected by the Copyright Act under 17 U.S.C. §§ 102 and 103, and (2) the claim seeks to

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