EXHIBIT A

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

APPLE MORTGAGE CORP.,

Plaintiff,

- against -

RICHARD BARENBLATT ET AL.,

Defendants.

13-cv-9233

OPINION AND ORDER

JOHN G. KOELTL, District Judge:

Apple Mortgage ("Apple"), a mortgage broker in New York, brought this action against four former employees of Apple, namely Richard Barenblatt, David Breitstein, Keith Furer, and Kevin Ungar (collectively the "defendants"), after those employees resigned from Apple and joined GuardHill Financial Corporation ("GuardHill"), another mortgage broker. The gist of Apple's suit is that the defendants copied documents pertaining to Apple's customers and used the information at GuardHill to close deals with purported Apple customers.

Apple asserted various state law claims against the defendants, including breach of contract, unfair competition, and tortious interference with prospective and existing contractual relations. Apple also brought claims against the defendants for violation of the Computer Fraud and Abuse Act, 18 U.S.C. § 1030 et seq. ("CFAA"), alleging that the defendants accessed Apple's computer network without authorization. Compl.

¶¶ 126-27, 131-34. Apple sought injunctive relief and at least $5 million in compensatory damages and $10 million in punitive damages. The defendants brought several counterclaims against Apple, arguing that Apple had failed to pay them commissions for loans including loans that closed after they left Apple and quarterly bonuses to which they were allegedly entitled. The defendants also claimed that Apple improperly deducted $276 from each of their paychecks and other amounts for various expenses such as advertising, although these deductions were not part of the compensation formula in the defendants' employment contracts. Defs.' Answer ¶¶ 3, 104-07, 130, 134, 139, 144, 155-56, 159.

This Court has jurisdiction under 28 U.S.C. § 1331 over Apple's claims under the CFAA. The Court has supplemental jurisdiction under 28 U.S.C. § 1367(a) over Apple's state law claims under New York law and the defendants' state law counterclaims.

Apple now moves for summary judgment dismissing the defendants' counterclaims. The defendants move for summary judgment dismissing Apple's claims and cross move for summary judgment on Apple's liability on their counterclaims. The defendants' motion for summary judgment dismissing Apple's claims is granted, and the defendants' cross-motion for summary judgment as to Apple's liability on the counterclaims is denied.

Apple's motion for summary judgment dismissing the defendants' counterclaims is granted in part and denied in part.

I.

The standard for granting summary judgment is well established. "The court shall grant summary judgment if the movant shows that there is no genuine dispute as to any material fact and the movant is entitled to judgment as a matter of law." Fed. R. Civ. P. 56(a); see also Celotex Corp. v. Catrett, 477 U.S. 317, 322 (1986). "[T]he trial court's task at the summary judgment motion stage of the litigation is carefully limited to discerning whether there are any genuine issues of material fact to be tried, not to deciding them. Its duty, in short, is confined at this point to issue-finding; it does not extend to issue-resolution." Gallo v. Prudential Residential Servs. Ltd. P'ship, 22 F.3d 1219, 1224 (2d Cir. 1994). The moving party bears the initial burden of "informing the district court of the basis for its motion" and identifying the matter that "it believes demonstrate[s] the absence of a genuine issue of material fact." Celotex, 477 U.S. at 323. The substantive law governing the case will identify the material facts and "[o]nly disputes over facts that might affect the outcome of the suit under the governing law will properly preclude the entry of

summary judgment." Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 248 (1986).

In determining whether summary judgment is appropriate, the Court must resolve all ambiguities and draw all reasonable inferences against the moving party. See Matsushita Elec. Indus. Co. v. Zenith Radio Corp., 475 U.S. 574, 587 (1986) (citing United States v. Diebold, Inc., 369 U.S. 654, 655 (1962)); see also Gallo, 22 F.3d at 1223. Summary judgment is improper if there is any evidence in the record from any source from which a reasonable inference could be drawn in favor of the non-moving party. See Chambers v. TRM Copy Ctrs. Corp., 43 F.3d 29, 37 (2d Cir. 1994).

II.

The parties do not dispute the following facts unless otherwise noted.

Defendants David Breitstein, Keith Furer, Richard Barenblatt, and Kevin Ungar began working as mortgage loan originators at Apple between November 1998 and November 2002. Pl.'s 56.1 Stmt. ¶¶ 1-4; Defs.' 56.1 Resp. ¶¶ 1-4. The defendants were at will employees. Defs.' 56.1 Stmt. ¶ 5; Pl.'s 56.1 Resp. ¶ 5. Eric Appelbaum is the sole owner of Apple and was the President of Apple while the defendants were employed by Apple. Defs.' 56.1 Stmt. ¶ 3; Pl.'s 56.1 Resp. ¶ 3.

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