

**IN THE COURT OF COMMON PLEAS OF PHILADELPHIA COUNTY  
FIRST JUDICIAL DISTRICT OF PENNSYLVANIA  
TRIAL DIVISION-CIVIL**

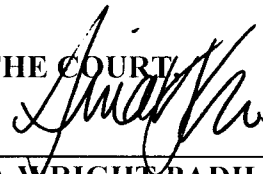
HB LITIGATION CONFERENCES, LLC,	:	December Term 2017
Plaintiff,	:	
v.	:	No. 2075
NETDILIGENCE,	:	
Defendant.	:	Commerce Program
	:	
	:	Control Number <del>1804321</del>

**ORDER**

*18143721*

**AND NOW**, this 31<sup>st</sup> day of October, 2018, upon consideration of Defendant NetDiligence’s Motion for Summary Judgment and Plaintiff HB Litigation Conferences, LLC’s response in opposition and in accord with the attached Opinion, it hereby is **ORDERED** that the Motion for Summary Judgment is **Granted** and judgment is entered in favor of Defendant NetDiligence and against Plaintiff HB Litigation Conferences, LLC on the claims alleged in Plaintiff’s complaint.<sup>1</sup>

BY THE COURT



NINA WRIGHT PADILLA, J.

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<sup>1</sup> This order does not address Defendant’s counterclaim.

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HB LITIGATION CONFERENCES, LLC,	:	December Term 2017
Plaintiff,	:	
v.	:	No. 2075
NETDILIGENCE,	:	
Defendant.	:	Commerce Program
	:	
	:	Control Number 1804321

**OPINION**

This is a dispute between plaintiff HB Litigation Conferences, LLC (“Plaintiff”) and defendant NetDiligence (“Defendant”) who entered into a business relationship to produce a cyber risk and privacy liability program. Presently before the court is defendant’s motion for summary judgment on plaintiff’s claims. For the reasons discussed below, the motion for summary judgment is granted.

In June, 2010, defendant partnered with plaintiff to produce a CyberRisk and Privacy Liability Program. Defendant was responsible for content and faculty development, agenda development, speaker selection, speaker invitation, presentation development delivery, faculty oversight and lead generation, program promotion and sales leads.<sup>2</sup> Plaintiff was responsible for speaker coordination, material coordination and publishing, accreditation, audio/video coordination, registration and customer service, payment processing, on site staffing, marketing, copywriting, direct marketing, marketing design, sponsor/exhibit sales, and corporate

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<sup>2</sup> Exhibit “B” – Term Sheet- attached to plaintiff’s response in opposition to defendant’s motion for summary judgment.

sponsorship sales.<sup>3</sup> Plaintiff retained the right of refusal on future events.<sup>4</sup> According to the Term Sheet, the respective parties had the right to use trademarks specifically for purposes of promoting the event. The event was marketed as “the conference and webcast of HB Litigation Conferences presents the NetDiligence® Cyber Risk and Privacy Liability Forum”. Plaintiff had the right to brand “Powered by HB Litigation Conferences” and to use NetDiligence trademarks in promotions. Defendant also had the right to use trademarks, use HB Litigation Conferences trademarks in promotions, and the right to recorded content under non-exclusive worldwide license in all media.<sup>5</sup> The parties agreed to evenly split (i.e. 50/50) the profit within thirty days of the event and to share financial reports at the time of reconciliation. The cyberrisk and privacy conferences were held twice a year in Philadelphia, Pennsylvania and California from 2010 to 2017.<sup>6</sup> The respective parties had the right to resell or repackage video and audio presentations with each party bearing cost and collecting 100% of revenues. According to the term sheet, each party “may” collect revenues or sales it makes, aka “eat what you kill”.<sup>7</sup>

Plaintiff and defendant never registered a partnership entity with the Commonwealth of Pennsylvania or any other state, nor were partnership tax returns ever filed by the alleged partnership, plaintiff or defendant. Each partner accounted for the partnership profits on its own

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<sup>3</sup> Exhibit “B” – Term Sheet- attached to plaintiff’s response in opposition to defendant’s motion for summary judgment.

<sup>4</sup> Id.

<sup>5</sup> Id.

<sup>6</sup> Id. See also, defendant’s motion for summary judgment ¶¶ 3, 7 and plaintiff’s response in opposition ¶¶ 3, 7.

<sup>7</sup> Term Sheet attached to defendant’s motion for summary judgment as Exhibit “ “ and plaintiff’s response to defendant’s motion for summary judgment as Exhibit “ “.

tax returns.<sup>8</sup> The term sheet did not include a set term, nor were there any agreed requirements as to the number of conferences that would be presented per year.<sup>9</sup>

On October 13, 2017, defendant informed plaintiff as follows:

“I think it best for NetDiligence to make a clean break from HB for 2018. That includes next June 2018 (Philly) and Oct. (2018). NetDiligence is securing a new Philly conf property location for the week of June 11.”<sup>10</sup>

Defendant informed plaintiff that it

“was willing to take over HB’s 2018 Hyatt contract (should you want) but will need your decision on that by next week...Should you still prefer move toward your own June conf without us at the Hyatt that’s fine and totally your call, we wanted to at least extend the offer.”<sup>11</sup>

Additionally, defendant informed plaintiff that it wanted to leave their alliance on a positive note and were in the process of notifying all their insurance and business partners of their plans/goals and to mention its departure in a positive manner.<sup>12</sup> The parties reached an agreement regarding the June 2018 Hyatt Contract for the conference in Philadelphia and defendant assumed liability for the Hyatt regarding the June 2018 conference.<sup>13</sup> Additionally, defendant supplied plaintiff with the public message announcement to be shared with vendors regarding defendant’s plans. The public message announcement noted that for the 2018 programming NetDiligence would assume all management aspects of the conferences in house

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<sup>8</sup> See defendant’s motion for summary judgment ¶ 4 and plaintiff’s response in opposition ¶ 4.

<sup>9</sup> See defendant’s motion for summary judgment ¶ 6 and plaintiff’s response in opposition ¶ 6.

<sup>10</sup> See Exhibit “B” attached to defendant’s motion for summary judgment.

<sup>11</sup> Id.

<sup>12</sup> Id.

<sup>13</sup> Defendant’s motion for summary judgment ¶ 11, plaintiff’s response in opposition ¶ 11.

and that the programs would be called Netdiligence® Cyber Risk Summit.<sup>14</sup> Defendant advertised and held its NetDiligence ® Cyber Risk Summit at the Bellevue Hotel in Philadelphia from June 12 to June 14, 2018,. It was marketed as the “9<sup>th</sup> Annual Cyber Networking Event”.<sup>15</sup>

In December, 2017, plaintiff instituted this action against defendant for breach of contract, breach of fiduciary duty, usurpation of corporate opportunity and conversion/misappropriation of partnership property. Defendant filed an answer with new matter and counterclaims alleging breach of contract, unjust enrichment and fraud. Now, before the court is defendant’s motion for summary judgment on plaintiff’s claims.<sup>16</sup>

### **DISCUSSION**

The crux of plaintiff’s complaint is that defendant wrongfully terminated their partnership and as a result plaintiff is entitled to damages related to lost profits generated by future conferences, including the 2018 conferences. Plaintiff’s complaint alleges claims for breach of contract, breach of fiduciary duty, usurpation of corporate opportunity and conversion/misappropriation of partnership property. For the reasons discussed below, plaintiff’s complaint fails as a matter of law.

An association of two or more persons to carry on as co-owners of a business for profit is a partnership.<sup>17</sup> A partnership in which the partners have not agreed to remain partners for a

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<sup>14</sup> See Exhibit “D” attached hereto to defendant’s motion for summary judgment.

<sup>15</sup> See Exhibit “A” to plaintiff’s response in opposition to defendant’s motion for summary judgment.

<sup>16</sup> The court notes that defendant filed its instant motion for summary judgment prior to the discovery deadline (January 7, 2019) currently designated in the Case Management Order. Plaintiff did not object to defendant’s motion as premature and the question at issue is a matter of law, hence, the motion for summary judgment, is properly before the court for consideration.

<sup>17</sup> See 15 Pa. C. S. § 8411. Title 15 Pa. C. S. §§ 8301-8365, the Pennsylvania Uniform Partnership Act pertaining to general partnerships, was repealed effective February 21, 2017. A new

definite term or the completion of a particular undertaking is known as a partnership at will.<sup>18</sup> A partnership at will may be dissolved at any time, by the express will of any partners, without violating the partnership agreement.<sup>19</sup> Such an at-will dissolution “need not be supported by any justification.”<sup>20</sup> Here, the partnership between plaintiff and defendant was an at will partnership. The Term Sheet which evidences the relationship between the parties and their respective obligations to one another in conducting the bi annual conferences does not contain a fixed term nor does it set forth a particular undertaking.<sup>21</sup> In a partnership at will, a partnership is dissolved and its business shall be wound up when the partnership knows or has notice of a person’s express will to withdraw as a partner.<sup>22</sup> Here, plaintiff knew on October 13, 2017 that defendant intended to withdraw and terminate the partnership. Since, plaintiff was aware of defendant’s intention to dissolve the partnership as of October 13, 2017, the partnership between

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statutory chapter pertaining to general partnerships, the Pennsylvania Uniform Partnership Act of 2016, 15 Pa. C. S. §§ 8411 to 8486, was enacted effective February 21, 2017.

<sup>18</sup> 15 Pa. C. S. § 8412.

<sup>19</sup> *Girard Bank v. Haley*, 460 Pa. 237, 243, 332 A.2d 443, 446 (1975). *See also Canter's Pharmacy v. Elizabeth Associates*, 396 Pa.Super. 505, 510, 578 A.2d 1326, 1329 (1990).

<sup>20</sup> *Id.* at 460 Pa. at 243, 332 A.2d at 446.

<sup>21</sup> Here, the partnership’s purpose was to “produce a NetDiligence program. NetDiligence was taking the lead on the content and faculty development, bringing to the table expertise and contacts. HB is taking the organizational and operational lead, as well filling in with faculty and subject development as necessary. The parties will equally share sales and marketing functions.” See, Exhibit “B” to plaintiff’s response in opposition to defendant’s motion for summary judgment. The partnership is not for a particular undertaking since it did not have a minimum or maximum duration or was not required to terminate at the conclusion of a particular venture whose time is indefinite but certain to occur. See, 15 Pa. C. S. A. § 8412 Committee Comment (2016); see also, *Canter's Pharmacy, Inc. v. Elizabeth Associates*, 578 A.2d 1326, 396 Pa. Super. 505 (1990)(operating a personal care facility may continue indefinitely; there is nothing particular about it) and *Girard Bank v. Haley*, 332 A.2d 443 (Pa. 1975)(partnership purpose to maintain and lease buildings may continue indefinitely).

<sup>22</sup> 15 Pa. C.S. § 8481.

the parties was dissolved effective October 13, 2017. As such, plaintiff is not entitled to any damages for lost profits post October 13, 2017 since the partnership was dissolved.<sup>23</sup> The only duties defendant has to plaintiff post dissolution is the duty to wind up the affairs of the partnership pre October 13, 2017.<sup>24</sup> Consequently, plaintiff's claims for breach of contract, breach of fiduciary duty, usurpation of corporate opportunity and misappropriation of partnership property seeking 50% of future profits from future cyber conferences are dismissed since the partnership was terminable at will and dissolved on October 13, 2017.

In an attempt to salvage its claim, plaintiff argues that it is due 50% of the profits from the 2018 conferences since there is evidence that defendant was/is continuing the partnership business. However, the evidence relied upon by plaintiff only supports the conclusion that the partnership relationship between plaintiff and defendant terminated October 13, 2017.<sup>25</sup> While evidence exists that plaintiff reserved hotel space for the first conference in June 2018, defendant assumed liability for the June 2018 contract with the Hyatt and assumed all the costs associated with the conference.<sup>26</sup> As for the second conference in 2018, the only evidence of planning was an email exchange regarding finding a venue. The evidence shows that defendant could not

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<sup>23</sup> While the partnership between plaintiff and defendant is dissolved, there is no evidence of record that the partnership has been wound up. Plaintiff has not alleged any claims in its complaint related to any wrongdoing concerning the winding up of the partnership.

<sup>24</sup> A dissolved partnership shall wind up its business and the partnership continues after dissolution only for the purpose of winding up. *See 15 Pa. C. S. § 8482 (a)*.

<sup>25</sup> There is nothing in the term sheet nor is there any evidence of record precluding either party from independently continuing in the business of presenting cyber security programs post dissolution. Either plaintiff or defendant may choose to independently continue the business conducted pre dissolution of the partnership.

<sup>26</sup> See Exhibits "C-H" attached to defendant's motion for summary judgment.

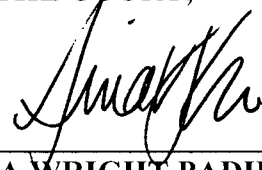
make any decision or commitments about the 2018 plans until after the October 2017 event.<sup>27</sup>

This evidence supports the conclusion that the partnership between plaintiff and defendant terminated on October 13, 2017.

### CONCLUSION

Based on the foregoing, defendant's motion for summary judgment is granted and judgment is entered in favor of defendant and against plaintiff on the claims alleged in plaintiff's complaint.

BY THE COURT,



NINA WRIGHT PADILLA, J.

10/31/18

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<sup>27</sup> See Exhibit "C" attached to plaintiff's response in opposition to defendant's motion for summary judgment.