

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

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In the Matter of the Application of	:	
GREENLIGHT CAPITAL, INC.,	:	Index No.
	:	
Petitioner,	:	
	:	PETITION FOR PRE-ACTION
For an Order, Pursuant to Section 3102(c)	:	DISCLOSURE
of the Civil Practice Law and Rules, to	:	
compel pre-action disclosure from	:	
	:	
SEEKING ALPHA, INC.,	:	
	:	
Respondent,	:	
	:	
of the identity of a prospective	:	
defendant, or identities of prospective	:	
defendants, in an action to be commenced	:	
by Petitioner, and who is or are presently	:	
referable by Petitioner only as John or	:	
Jane Doe or John or Jane Does.	:	

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Petitioner Greenlight Capital, Inc. (“Greenlight” or “Petitioner”), by and through its attorneys, Akin Gump Strauss Hauer & Feld LLP, as and for its petition in this proceeding seeking pre-action disclosure pursuant to CPLR 3102(c), hereby alleges the following:

INTRODUCTION

Greenlight submits this petition for pre-action disclosure from Respondent Seeking Alpha, Inc. (“Respondent”) so that Greenlight may sue by name a person who, through messages posted to Respondent’s website, (i) wrongfully disclosed and misappropriated Greenlight’s valuable trade secrets, (ii) breached confidentiality obligations owed to Greenlight, and/or (iii) aided and abetted the breach of such confidentiality obligations. The prospective defendant posts on Respondent’s website under a pseudonym, and Respondent has refused to disclose his or her

true name to Greenlight voluntarily. Greenlight respectfully requests that this Court order Respondent to make the disclosures described herein so Greenlight can sue the pseudonymous poster under his or her real name.

PARTIES

1. Greenlight is a Delaware corporation with its principal place of business in New York, and is authorized to do business in New York.

2. Respondent is a Delaware corporation with its principal place of business located at 345 Seventh Avenue, New York, NY 10001. Respondent owns and maintains a website known as seekingalpha.com, and is authorized to do business in New York.

FACTUAL ALLEGATIONS

The Business of Greenlight Capital

3. Greenlight is an investment manager whose primary business is generating successful investment strategies developed by analyzing available information about its prospective and current investments. This research generally includes, among other things, thorough reviews of publicly available documents, as well as interaction with management teams, customers, competitors, industry consultants and other industry participants. This research produces an understanding of industry level dynamics, such as drivers of growth, competition, ease of entry, switching costs and return on investment profiles, that is highly proprietary. Greenlight's activity in the investment markets is well known and closely watched by other traders and investment advisors, including traders and investment advisors who are competitors to Greenlight.

4. Greenlight's investment strategies are developed at considerable expense, and it therefore employs measures to ensure their confidentiality from other traders and investment advisors. For example, Greenlight's employees are required pursuant to both firm policy and

their employment agreements to keep information regarding Greenlight's non-public investment strategies confidential. In addition, Greenlight's prime brokers and custodians are required by confidentiality agreements and other duties to Greenlight to keep non-public information concerning Greenlight's securities positions confidential.

5. On July 2, 2013, Greenlight commenced its acquisition program for securities of Micron Technologies ("Micron").

6. On November 14, 2013, Greenlight filed a Form 13F with the U.S. Securities and Exchange Commission ("SEC"), disclosing its various holdings for the quarter ending September 30, 2013 (the "Third Quarter 13F"). Form 13F is a report of equity holdings that certain investment managers must file with the SEC on a quarterly basis pursuant to the federal securities laws. The SEC makes Forms 13F publicly available on its website.

7. Greenlight did not disclose its position in Micron on the Third Quarter 13F. Rather, in keeping with its efforts to protect the confidentiality of its investing secrets, Greenlight requested Confidential Treatment regarding its Micron stock in a letter to the SEC also dated November 14, 2013 (the "Confidentiality Letter"). In the Confidentiality Letter, Greenlight indicated its intent to continue to build its position in Micron. As noted to the SEC in the Confidentiality Letter, disclosure of Greenlight's position would materially impair or possibly eliminate Greenlight's ability to successfully pursue its investment strategy.

8. Prior to the SEC's receipt of the Confidentiality Letter, the only persons who lawfully possessed information regarding Greenlight's position in Micron were persons with a contractual, fiduciary, or other duty to maintain the confidentiality of Greenlight's position: Greenlight's employees, counsel, prime and executing brokers and other agents.

The Anonymous Party's Tortious Conduct and other Breaches of Duty

9. On November 14, 2013 – but before Greenlight had delivered the Confidentiality Letter to the SEC – certain internet postings were made on Respondent's website, seekingalpha.com, by a person writing under the pseudonym "Valuable Insights". "Valuable Insights" is listed as a "Contributor" to seekingalpha.com and frequently posts to the site.

10. Sometime prior to 9:32 AM on November 14, 2013, Valuable Insights posted "Expect one mega hedge fund rock star to show up as [Micron] holder today, not Ackman, Icahn or Loeb" Valuable Insights then followed up that post with two posts giving hints to other users of Seeking Alpha. First, he or she posted "Hint...this hedge fund has experience in consolidating (oligopoly) tech industries...." He or she continued: "Hint...would not mention if fund added more than 2 or 3 positions a quarter...." At or around 9:32 AM, after the original and follow-up messages had been posted by Valuable Insights, Seeking Alpha user "Dr. Joseph Haluska" suggested "Einhorn", referring to Greenlight's President and co-founder, David Einhorn. Valuable Insights responded at 10:15 AM, confirming that Greenlight was the Micron shareholder referred to in its earlier posts with the statement: "The Dr. is in...you heard it here first."

11. Upon information and belief, Valuable Insights owned shares in Micron at the time of the postings. The trading price for Micron's shares rose immediately after Valuable Insight's posting. Because this was the very time frame in which Greenlight was in the process of building its Micron position, it was forced to pay higher prices for its Micron securities.

Greenlight's Additional Purchases and the Robin Hood Conference

12. From November 14 until November 19, 2013, Greenlight continued to build its position in Micron. On November 21, 2013, David Einhorn gave a presentation in New York City at the Robin Hood Investor Conference. In that presentation, he disclosed that Greenlight

had established a “long” position in Micron’s securities. On November 25, 2013, Greenlight filed with the SEC an amended Form 13F for the quarter ending September 30, 2013, which disclosed Greenlight’s position in Micron.

CLAIMS AGAINST VALUABLE INSIGHTS

Misappropriation of Trade Secrets

13. Valuable Insights is in possession of information concerning Greenlight which constitutes valuable confidential and proprietary trade secrets of Greenlight.

14. Valuable Insights misappropriated and misused those trade secrets by posting them to seekingalpha.com. As a direct and proximate result of that misappropriation and misuse, Greenlight has been damaged in an amount to be proven at trial. Among other things, Greenlight’s acquisition program for securities of Micron was negatively affected by the premature disclosure of its interest in the stock.

15. Further misappropriation and misuse of Greenlight’s trade secrets and/or confidential and proprietary information by Valuable Insights will also directly and proximately harm Greenlight, and cannot be stopped without first identifying Valuable Insight’s identity.

Breach of Duty of Confidentiality

16. Prior to the internet postings, the only persons to whom Greenlight disclosed its position in Micron were persons subject to a contractual, fiduciary, or other duty to maintain the confidentiality of that information: Greenlight’s employees, legal counsel, prime and executing brokers, fund administrator, and other agents.

17. Hence, to the extent Valuable Insights learned about Greenlight’s plan to acquire Micron shares directly from Greenlight, Valuable Insights violated his or her fiduciary duty of confidentiality to Greenlight. Greenlight was harmed by Valuable Insights’ breach of duty,

including by having its acquisition program for securities of Micron negatively affected by the premature disclosure of its interest in the stock.

Aiding and Abetting Breach of Duty of Confidentiality

18. In the alternative, if Valuable Insights was not itself subject to a contractual, fiduciary, or other duty to maintain the confidentiality of Greenlight's position, then Valuable Insights had to have learned that information from an individual who owed a contractual, fiduciary, or other duty of confidentiality to Greenlight (a "Greenlight Agent").

19. Valuable Insights is identified on seekingalpha.com as a fund manager with more than 20 years of experience in the securities industry. Upon information and belief, Valuable Insights knew that any Greenlight Agent from whom Valuable Insights learned of Greenlight's Micron strategy would necessarily have a contractual, fiduciary, or other duty not to disclose that information to Valuable Insights.

20. Upon information and belief, Valuable Insights actively encouraged, procured, and participated knowingly in the breach by a Greenlight Agent of his, her or its duty of confidentiality. Valuable Insights therefore aided and abetted a breach of fiduciary duty, and is liable to Greenlight in an amount to be determined at trial.

NEED FOR RELIEF AND LACK OF SUBSTANTIAL BURDEN

21. Respondent is the only source known to Greenlight that can identify Valuable Insights by his or her true name. Hurley Aff. ¶ 6. On November 21, 2013, Greenlight's counsel sent a letter to Respondent requesting the identity of the user "Valuable Insights". In a letter dated November 26, 2013, Respondent refused Greenlight's request. *Id.* Ex. D. The relief requested herein is therefore necessary in order for Greenlight to include Valuable Insights' true name in the caption of the case Greenlight intends to commence against Valuable Insights alleging the claims set forth above.

22. The information Petitioner seeks is readily available to Respondent. Valuable Insights is identified on seekingalpha.com as an “anonymous contributor.” According to the web site, “Seeking Alpha holds [its] anonymous contributors to the same compliance and biographical standards as contributors who write under their own name,” and insists “on receiving the author's real name and contact information.” *Id.* ¶ 20, Ex. F.

23. Moreover, Valuable Insights has expressly agreed to disclosure of his or her identity under the circumstances alleged in this petition. Any person using seekingalpha.com “agrees to be bound by [the] terms of use (the ‘TOU’)” published on the site. *See id.* ¶ 21, Ex. G. The TOU and Respondent’s “privacy policy” both provide expressly that “we may disclose your Personal Information or any information you submitted via the Site and its services (including via your Seeking Alpha email account) if we have a good faith belief that disclosure of such information is helpful or reasonably necessary to i) comply with any applicable law, regulation, **legal process** or governmental request, ii) enforce our Terms of Service including investigations of potential violations thereof . . . or iv) protect against harm to the rights, property or safety of Seeking Alpha, its users, yourself or the public.” *See id.* (emphasis added).

24. Greenlight is thus not only entitled to the disclosure sought under New York law and the CPLR, that disclosure is also expressly contemplated by the express terms of the TOU, since it is necessary to “protect against harm to the rights [and] property” of Greenlight and is the subject of “legal process.” The disclosure sought by the Petition also relates to a blatant violation of seekingalpha.com’s Terms of Service. Among other things, those Terms forbid (i) “use of the Site for any unlawful purpose,” (ii) “publishing of other people's private and confidential information,” (iii) posting “any Content which, either the act of posting or the comment itself, you do not have a right to do . . . as a result of an employment, contractual,

fiduciary or other legal obligation or relationship,” (iv) posting “any non-public or otherwise restricted, confidential or proprietary information without authorization” and (v) posting “about a stock with intention to boost or reduce the stock’s price and sell (or buy) the stock into the resulting strength or weakness.” *See id.* ¶ 22, Ex. G. Having violated some and probably all of these express terms of use of seekingalpha.com, Valuable Insights can have no reasonable expectation that his or her identity will remain concealed by Respondent.

25. Finally, the relief requested would impose no burden, or virtually no burden, on Respondent, which need only check the records it insists on receiving from all pseudonymous contributors – including the “real name and contact information” for Valuable Insights – and turn that information over to Petitioner. Indeed, according to an article published on seekingalpha.com last month, employees of Respondent interviewed Valuable Insights just weeks ago. <http://seekingalpha.com/article/1931811-valuable-insights-positions-for-2014-still-an-abundance-of-unique-ideas-in-small-caps> (“Seeking Alpha's Abby Carmel and Daniel Shvartsman recently spoke with Valuable Insights to discuss his outlook on and positioning for small-cap investing in the coming year.”). Clearly Respondent knows how to reach Valuable Insights when it wants to.

PRAYER FOR RELIEF

WHEREFORE, it is respectfully demanded that the Court (i) order Respondent to disclose the name(s) and contact information of a contributor to seekingalpha.com using the pseudonym Valuable Insights, and produce copies of Respondent’s now-archived postings made by Valuable Insights, or (ii) grant leave to Petitioner to serve upon Respondent discovery requests narrowly tailored to (a) identify the name(s) and contact information of Valuable Insights, and (b) obtain copies of Respondent’s now-archived postings made by Valuable

Insights, so as to enable Petitioner to sue by name, and serve process on, the seekingalpha.com contributor using the pseudonym Valuable Insights,” and so as to enable Petitioner to procure critical evidence in support of such suit; and (iii) that it grant Petitioner such other and further relief as the Court may deem just and proper.

Dated: New York, New York
February 13, 2014

Respectfully submitted,

/s/ Mitchell Hurley

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