



IN THE COURT OF CHANCERY OF THE STATE OF DELAWARE

CHRISTOPHER CERCY,

Plaintiff,

v.

CANTOR FITZGERALD, L.P.,
a Delaware limited partnership,

Defendant.

PUBLIC VERSION
September 12, 2023

C.A. No. 2023-0909-MTZ

VERIFIED COMPLAINT FOR DECLARATORY RELIEF

Plaintiff Christopher Cercey, by his undersigned attorneys, for his Verified Complaint for Declaratory Relief against defendant Cantor Fitzgerald, L.P., (“CFLP”), alleges as follows:

NATURE OF CASE

1. This is an action by a former limited partner of CFLP seeking a declaration that certain provisions of the Agreement of Limited Partnership of Cantor Fitzgerald, L.P. (the “Partnership Agreement”), copy attached as Exhibit A, constitute unreasonable—and hence unlawful—restraints on fair and lawful competition, and therefore may not be enforced to cause a forfeiture of Cercey’s rights to nearly \$17,000,000 in payments for his CFLP partnership interests after the termination of his employment by CFLP’s subsidiary, Cantor Fitzgerald & Co. (“Cantor”), which partnership units had been granted to Cercey as compensation for his services to Cantor as an employee.

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THE PARTIES

2. Cercy resides in the State of Connecticut.
3. Cercy is a former limited partner of CFLP and a former employee of Cantor who, prior to his termination, had worked for Cantor for more than 17½ years.
4. CFLP is a Delaware limited partnership having its principal place of business in the City and State of New York.
5. CFLP is a holding company, including as the parent of one or more companies that are not in the business or trading or brokering financial instruments; it is on information and belief not itself in the business of trading or brokering financial instruments.

JURISDICTION

6. This Court has subject matter jurisdiction over this action under 6 *Del. C.* § 2708(b), which grants the courts of Delaware jurisdiction over actions on contracts, such as the Partnership Agreement here, in which the parties have specified that Delaware law governs; and under 6 *Del. C.* § 17-111, which grants the Court of Chancery jurisdiction over “[a]ny action to interpret, apply or enforce the provisions of a partnership agreement, or the duties, obligations or liabilities of a limited partnership to the partners of the limited partnership, or the rights or powers of, or restrictions on, the limited partnership or partners, or any provision of this

chapter, or any other instrument, document, agreement or certificate contemplated by any provision of this chapter.”

7. CFLP is subject to the personal jurisdiction of this Court because it is a Delaware limited partnership. Service of process can be perfected by serving the registered agent for CFLP, Corporation Service Company, 251 Little Falls Drive, Wilmington, DE 19808.

FACTS

Cercy’s Employment and Compensation

8. Cercy was employed by Cantor for more than 17½ years, from about November 1, 2005, through June 9, 2023, the last 7½ plus years in Cantor’s Greenwich, Connecticut office.

9. Prior to his employment by Cantor, Cercy was self-employed by HEG Securities LLC working under the auspices of Refco, essentially as a bond trader, including for and in packaging of defeasance portfolios for issuers of bonds, provided by responding to such issuers’ requests for proposals for such portfolios.

10. On information and belief, Cantor did not engage in the business of packaging defeasance portfolios prior to Cercy’s joining the firm.

11. When Cercy joined Cantor as an employee, he brought with him the personal skills, experience, expertise, trading strategies, and abilities that he had himself developed at HEG Securities—and earlier.

12. Throughout his 17+ years tenure at Cantor, Cercy did the same type of work as he had performed prior to his arrival.

13. Throughout his tenure at Cantor, Cercy's performance utilized the same essential personal skills, experience, expertise, trading strategies, and knowledge that he had brought with him when he joined Cantor.

14. Throughout his tenure at Cantor, Cercy did not utilize trading strategies or know-how other than that which he essentially had brought with him when he joined Cantor.

15. Throughout his tenure at Cantor, Cercy operated and performed almost entirely independently with the support of a team of traders that he recruited, hired, and managed.

16. In the months leading up to the termination of his employment, Cantor complained to Cercy about the fact that he operated as independently as he did.

17. At no time did Cantor provide any training or impart any information not publicly available relating to Cercy's job responsibilities and activities as a bond trader or packager of defeasance portfolios that it designated as confidential and that, by reason of its confidential quality, afforded or affords Cantor a competitive advantage in the marketplace.

18. Cercy's job functions at Cantor did not involve customer development.

19. While at Cantor, Cercy was not provided with a budget for business entertainment, and he did not expend any significant money or Cantor resources to build personal business relationships on behalf of Cantor.

20. Cantor compensated Cercy for his services pursuant to a plan that was formulaically based on the profits and losses of his (including his team's) performance.

21. A component of the Cantor compensation plan for Cercy (and other traders) was that a fixed percentage of his compensation would be paid to him by grants of partnership units in CFLP.

22. The grant of partnership units was mandatory insofar as Cercy could not elect to receive a like value in cash in lieu of the grants.

23. All partnership units in CFLP that Cercy has owned were obtained by him pursuant to grants made a part of his compensation or, to a small extent, grants of partnership units in lieu of distributions derived from compensation grants.

24. None of Cercy's units were received in exchange for cash contributions by Cercy for the purchase of partnership units.

25. Cercy was at no time employed directly by CFLP.

26. Cercy did not provide services to CFLP except indirectly insofar as CFLP benefitted from his services for Cantor.

27. As a result of his performance and compensation over his years at Cantor, Cercey was granted partnership units valued at nearly \$17,000,000 in currently vested units (and more than \$1,000,000 in unvested units).

The Partnership Agreement

28. Although he has no recollection of doing so, Cercey believes that he likely signed the Partnership Agreement at some time prior to or contemporaneously with the first grant to him of CFLP partnership units as compensation for services he performed for Cantor.

29. CFLP did not provide Cercey with a copy of the Partnership Agreement or permit him to obtain one except upon his request in April 2023, and then only upon his execution and submission of a non-disclosure agreement.

30. Cercey's attorneys also were not permitted to receive and review the Partnership Agreement except upon execution and submission of a non-disclosure agreement.

31. Under the Partnership Agreement, Cercey ceased being a partner of CFLP upon the termination of his employment relationship with Cantor, and he



32. Until amended on March 6, 2023, the Partnership Agreement (as had earlier been amended from time to time) was the same agreement that was at issue

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and described by this Court in *Ainslie v. Cantor Fitzgerald, L.P.*, No. 9436-VCZ, 2023 WL 106924 (Del. Ch. Jan. 4, 2023).¹

33. As did the agreement described in *Ainslie*, the current Partnership Agreement as amended by the Sixth Amendment on March 6, 2023, includes [REDACTED]

[REDACTED] (a) restrictive covenants that [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED] “Restrictive Covenants”); and (b) [REDACTED]

forfeiture-for-competition provisions that [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED] (“Competitive Activity Condition”).

34. CFLP summarized the Sixth Amendment’s changes concerning the applicable duration of Restrictive Covenants and Competitive Activity Condition in a document entitled SUMMARY OF KEY CHANGES IN THE SIXTH

¹ In *Ainslie*, this Court determined that the below described Restrictive Covenants and Competitive Activity Condition, in the form as they appeared in the pre-March 6, 2023, Partnership Agreement, were on public policy grounds unenforceable.
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AMENDEMENT, copy annexed as Exhibit B, and distributed that summary to CFLP partners, including Cercy.

35. Under the terms of the Partnership Agreement, the scope and duration of the Restrictive Covenants are [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

36. Under the terms of the Partnership Agreement, the scope and duration of the Competitive Activity Condition are [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

37. Under the Partnership Agreement, the scope, duration, and other terms of the Competitive Activity Condition are [REDACTED]

[REDACTED]

[REDACTED]

38. The amount of the payments subject to forfeiture under the Competitive Activity Condition is [REDACTED]

[REDACTED]

39. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

40. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

Cantor's Constructive Termination of Cercy's Employment

41. Cercy's final day of employment by Cantor was June 9, 2023 (the "Last Day").

42. In the approximately nine months leading up to the Last Day, Cantor management personnel, acting in bad faith, made harassing changes to the terms and conditions under which they demanded Cercey work.

43. For example, after exercising unprecedented control over Cercey's trading activities for months, Cantor wrongfully attributed trading losses to Cercey by manipulating its marking of bond prices—*i.e.*, marking down the prices of bonds in a Cercey trading book only to promptly re-mark them back up just after transferring the book away from him, thus manufacturing artificial paper losses in his book that it charged to him in deficit for purposes of calculating compensation.

44. Immediately thereafter, Cercey remained the sole trader in the book that Cantor transferred away from him even while the gains in the transferred book from re-marking and otherwise were attributed to others, thus in effect “stealing” from Cercey the book's value for the benefit of others.

45. Cantor also wrongfully insisted that Cercey was personally liable to Cantor for those Cantor-manufactured artificial trading losses, despite a written contract (and common industry practice) to the contrary, threatening to sue him directly for those losses or charge them against CFLP's anticipated payments for his partnership interests when they would become due.

46. Because the 17½ year relationship had increasingly become strained, the parties entered in discussions and negotiations in its regard, some of which were through their lawyers, including concerning possible terms and conditions for its termination. Those discussions did not lead to an agreement.

47. On June 8, 2023, Cantor (through legal counsel) advised Cercy that pending negotiation of an exit agreement Cantor was, effective immediately, placing Cercy on “paid” administrative leave (meaning at a salary of \$5,000 per month), cutting off his access to Cantor’s systems and premises, and prohibiting from communicating with his team, bidding agents, or any others associated with Cantor’s business.

48. The imposed leave deprived Cercy of the very essence of his employment, the opportunity to earn compensation through trading activities and responding to requests for proposals from bond issuers.

49. The imposed leave was for Cercy an intolerable circumstance.

50. Near the close of business on June 9, 2023, Cercy declared that Cantor had constructively terminated his employment by sending a letter to Cantor’s Chief Operating Officer, Mark Kaplan, stating in relevant part as follows:

I cannot tolerate—nor could it be reasonable for anyone to expect me to tolerate—“employment” that forbids my conducting any business, deprives me from any canning opportunities, and put me into exile. It is clear to me—as it would be to anyone—that Cantor’s putting me on

“paid [\$5,000 per month] administrative leave” pending negotiation of an exit agreement is tantamount to Cantor’s terminating my employment, while putting on me the onus of announcing its end. So, in this way I accommodate Cantor: I declare that the employment relationship is at an end, albeit terminated by Cantor’s having constructively terminated me.

Current Circumstances

51. Cercy is unemployed.

52. Having been a bond trader and packager of defeasance portfolios for the vast majority of his working life, Cercy’s opportunities to apply and profit from his skills, experience, and pre-Cantor knowledge are tied directly to his ability, in the absence of unreasonable restraints, to engage in bond trading including for and in packaging defeasance portfolios.

53. On August 30, 2023, i.e., nearly twelve (12) weeks after the termination of Cercy’s employment by Cantor and of his partnership interest in CFLP and after Cercy advised CFLP of his intention to commence this action and sent a courtesy copy of a draft of a complaint essentially the same as this one, CFLP notified Cercy that “CFLP will not deem your bond trading activities (i.e., trading in U.S. Treasury bills, bonds, and futures) to constitute a “Competitive Business”

[REDACTED] but that “[t]o be clear, however, a Competitive Business in the Partnership Agreement does include your engagement in defeasance work, packaging of defeasance portfolios for issuers of bonds, and

helping or otherwise assisting the facilitation of defeasance portfolios for others who sell onto issuers.”

54. Cercy has reason to expect that, subject to any unreasonable restraints, he will be able to “ply his trade,” *i.e.*, engage in bond trading including for and in packaging defeasance portfolios, within the coming months.

55. Cercy will as a consequence of any enforced restraint likely lose substantial income, anticipated to be in a currently indeterminable “seven figures,” during the period of direct and conditional restraint.

56. CFLP contends that the Restrictive Covenants and Competitive Activity Condition are enforceable against Cercy and, on information and belief, intends to enforce at least the Competitive Activity Condition against Cercy in the absence of a judicial determination that those provisions are unenforceable.

57. On information and belief, CFLP contends that the Competitive Activity Condition does not constitute a restraint or restriction of trade or competition, and/or that if it does, it nonetheless need not be reasonable to be enforceable.

58. Cercy disputes that the Restrictive Covenant in the Partnership Agreement is, at least as applied to him, reasonable or enforceable; he instead contends that it is a restraint of competition and burdensome limitation on his

mobility that does not serve a legitimate CFLP (or Cantor) interest and that it therefore unlawfully restrains fair competition.

59. Cercy disputes that the Competitive Activity Condition, as applied to him, insofar as it would cause him to suffer a severe forfeiture of approximately \$17,000,000 in already earned and vested compensation for his engaging in competition is other than a restraint of trade and competition; he contends that it constitutes a restraint of trade and competition because that is both its purpose and effect.

60. Cercy disputes that the Competitive Activity Condition, as applied to him, is reasonable or enforceable; he contends that it does not serve a legitimate CFLP (or Cantor) interest and instead purposefully, effectively, and unlawfully restrains him from engaging in fair competition.

61. Additionally, *even if*, indeed especially if, [REDACTED] could and would be shown to be reasonably necessary to protect a *legitimate* CFLP interest, Cercy disputes that the Competitive Activity Condition is reasonably necessary for such protection to the extent it has a duration of [REDACTED] *i.e.* far longer than necessary (as what may be “necessary” is revealed by the Partnership

Agreement's providing for no longer than the [REDACTED] as sufficient to protect any such interest).

62. As applied to Cery, no legitimate CFLP interest in confidential information is served by the enforcement of the Restrictive Covenants.

63. The purpose and effect of applying the Restrictive Covenants to Cery is to restrict and restrain fair and lawful competition and to impose on him a burdensome limitation on his mobility.

64. As applied to Cery, no legitimate CFLP interest is served by the enforcement of the Competitive Activities Condition.

65. The purpose and effect of applying the Competitive Activities Condition to Cery is to restrict and restrain fair and lawful competition and to impose on him a burdensome limitation on his mobility.

66. Even *if* the Competitive Activities Condition is or would be necessary and sufficient for the protection of CFLP legitimate interest during [REDACTED] [REDACTED] that coincides with the Restrictive Covenants' duration, the Competitive Activities Condition's duration of [REDACTED] is necessarily longer than necessary to protect any legitimate CFLP interest.

67. To the extent that the duration of the Competitive Activities Condition exceeds the duration of the Restrictive Covenants, its purpose and effect is to restrict and restrain fair and lawful competition.

68. As a consequence of the dispute between Cercy and CFLP regarding the enforceability of the restraints on competition in the Partnership Agreement, Cercy is in a predicament where he must choose between taking either of two costly and/or risky paths: (a) obtaining employment or setting up shop for engaging in bond trading including packaging of defeasance portfolios, thus risking forfeiture of approximately \$17,000,000 of earned and vested compensation; or (b) refraining from competitive activity [REDACTED] costing him substantial income opportunities and risking longer term damage to his career as a result of it becoming more difficult to obtain employment after a long period of unemployment.

69. Cercy is insecure about engaging in competitive activity despite contending and believing that he has a lawful right to engage in fair competition without violating the Restrictive Covenants or triggering the forfeiture provision of the Competitive Activity Condition because (a) CFLP takes a contrary position and effectively threatens to enforce the Competitive Activity Condition, and (b) the forfeiture would be severe.

70. Accordingly, the dispute between Cercy and CFLP is ripe for speedy declaratory adjudication.

FIRST CAUSE OF ACTION

71. Cercy repeats and realleges the allegations contained in paragraph 1–70.

72. The Restrictive Covenants, *at least* as applied to Cercy, constitute an unreasonable restraint of trade in violation of the public policy of the State of Delaware.

73. Cercy expects that CFLP is poised to press enforcement of the Restrictive Covenants.

74. Enforcement of the Restrictive Covenants would likely cause Cercy irreparable harm, including substantial but incalculable financial loss and damage to his career.

75. Insofar as Cercy proposes to engage in competitive activity and CFLP effectively threatens enforcement of the Restrictive Covenants, Cercy suffers the predicament and insecurity of having to risk harm to his livelihood and career in order to engage in competitive activity lawfully and presently.

76. The dispute between the parties concerning the enforceability of the Restrictive Covenants against Cercy is ripe for judicial resolution.

77. Cercy is entitled to a judgment declaring that the Restrictive Covenants are not enforceable against him.

SECOND CAUSE OF ACTION

78. Cercy repeats and realleges the allegations contained in paragraphs 1–70.

79. The Competitive Activity Condition, *at least* as applied to Cercy, in all respects constitutes an unreasonable restraint of trade in violation of the public policy of the State of Delaware.

80. To the extent its duration with regard to non-compete conditions (other than with respect to forfeiture upon solicitation/hiring of any at-will employee) is [REDACTED] the Competitive Activity Condition as applied to all former partners, including Cercy, constitutes an unreasonable restraint of trade in violation of the public policy of the State of Delaware.

81. CFLP, contending that the Competitive Activity Condition is lawful and enforceable, effectively threatens to enforce it if Cercy engages in competitive activity during its duration.

82. Cercy therefore risks forfeiture of approximately \$17,000,000 of earned and vested compensation unless he refrains for [REDACTED] from applying and seeking to profit from his personal skills, experience, and non-confidential

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knowledge by engaging in competition that he contends and believes to be lawful and fair.

83. Cercy suffers the predicament and insecurity of having to risk suffering an enormous loss and career in order to engage in competitive activity lawfully and presently.

84. The dispute between the parties concerning the enforceability of the Competitive Activity Condition against Cercy is ripe for judicial resolution.

85. Cercy is entitled to a judgment declaring that the Competitive Activity Condition is not enforceable against him.

WHEREFORE, Cercy demands judgment in his favor as follows:

- a) declaring that the above-described Restrictive Covenants in the Agreement of Limited Partnership of Cantor Fitzgerald, L.P., that purport to prohibit Cercy from competing are unenforceable against him;
- b) declaring that the above-described Competitive Activity Condition in the Agreement of Limited Partnership of Cantor Fitzgerald, L.P., that purports to condition on non-competition Cercy's rights to receive payment for his partnership interests is unenforceable against him; and
- c) granting such other and further relief as the Court deems just and proper.

Dated: September 6, 2023

MONZACK MERSKY AND BROWDER, P.A.

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