

Index No.

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

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SULLIVAN & CROMWELL LLP,

Plaintiff,

-against-

AARON BRETT CHARNEY,

Defendant.

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SUMMONS AND VERIFIED COMPLAINT

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LAW OFFICES OF  
PAUL, HASTINGS, JANOFSKY & WALKER LLP  
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Attorneys for Plaintiff Sullivan & Cromwell LLP

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

SULLIVAN & CROMWELL LLP,

Plaintiff,

- against -

AARON BRETT CHARNEY,

Defendant.

Index No. 07600333

SUMMONS

The basis of venue is plaintiff's  
address: 125 Broad Street,  
New York, New York 10004

**FILED**  
FEB 01 2007

NEW YORK  
COUNTY CLERK'S OFFICE

TO THE ABOVE NAMED DEFENDANT:

YOU ARE HEREBY SUMMONED to answer the complaint in this action, or to serve a notice of appearance, if the complaint is not served with this summons, within twenty (20) days after the service of this summons, exclusive of the day of service, or within thirty (30) days after service is complete if this summons is not personally delivered to you within the State of New York. In case of your failure to appear or answer, judgment will be taken against you by default for the relief demanded in the complaint.

Dated: New York, New York  
February 1, 2007

PAUL, HASTINGS, JANOFSKY & WALKER LLP

By 

Zachary D. Fasman  
Allan S. Bloom

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*Attorneys for Plaintiff*  
SULLIVAN & CROMWELL LLP

SUPREME COURT OF THE STATE OF NEW YORK  
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07600333

VERIFIED COMPLAINT

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Plaintiff Sullivan & Cromwell LLP ("S&C"), by its attorneys, Paul, Hastings, Janofsky & Walker LLP, for its complaint against defendant Aaron Brett Charney ("Charney"), alleges as follows:

1. This is an action for injunctive relief and damages arising from the breach and threatened breach of Charney's fiduciary duties arising out of his employment as an associate attorney by S&C, breach of contract, and conversion, all based on Charney's disclosure of nonpublic client information and misappropriation of confidential S&C documents.

PARTIES

2. S&C is a New York limited liability partnership engaged in the practice of law that maintains its principal place of business at 125 Broad Street, New York, New York 10004-2498.

3. Charney is an attorney, admitted to practice law in the State of New York, who was employed by S&C as an associate from September 2003 until today.

### **BACKGROUND**

4. Since joining S&C in 2003, Charney has worked in the firm's Mergers and Acquisitions Group.

5. In May 2006, Charney raised concerns internally about alleged sexual orientation discrimination and retaliation. S&C undertook an expedited investigation of Charney's allegations, found there to be no basis for them, and so advised him.

6. Charney continued to work at S&C on client matters and continued to be paid by S&C. Charney made no further complaint until the morning of January 16, 2007, when Charney posted a notice on the Greedy Associates board on infirmation.com that he had sued the firm.

### **AS AND FOR A FIRST CAUSE OF ACTION** **(Breach of Fiduciary Duty)**

7. On or about January 16, 2007 Charney commenced an action against S&C by filing a complaint (the "Charney Complaint") in this Court alleging causes of action for sexual orientation discrimination and retaliation and seeking unspecified compensatory and punitive damages.

8. S&C disputes Charney's discrimination and retaliation claims and intends to defend vigorously against them.

9. As an attorney admitted to practice in this State, Charney is bound by the New York Code of Professional Responsibility. In addition, as an employee of S&C, Charney owed to S&C and its clients an undivided duty of loyalty and a duty to refrain from engaging in any conduct inimical to them including, without limitation, disclosing confidential, secret or non-

public information concerning them obtained during the course of his employment. These duties are further confirmed by numerous S&C policies to which Charney expressly agreed, including its policies on preservation of clients' confidences and secrets.

10. With the filing of the Charney Complaint and thereafter, Charney has used the Charney Complaint as the centerpiece of a malicious public relations campaign, the evident purpose of which has been to embarrass and denigrate S&C, and to name S&C's clients unnecessarily as part of his campaign.

11. At or about the time he filed the Charney Complaint, Charney posted a notice of his lawsuit on the Greedy Associates board on infirmation.com, together with an excerpt from the Charney Complaint and a reference to his personal website. He posted the filed Charney Complaint on his personal website and thereafter has actively sought opportunities to publicize its contents through interviews and by other means.

12. In furtherance of Charney's campaign, the Charney Complaint gratuitously identifies a number of S&C clients and their personnel and reveals confidential information obtained by S&C during the course of its representation of such clients. The Charney Complaint also discusses S&C staffing issues on a number of other client matters.

13. The Charney Complaint discloses confidential attorney-client communications between S&C and its clients.

14. Charney has also made disparaging comments concerning clients of S&C. In paragraph 143 of the Charney Complaint, for example, Charney implies that an S&C client acceded to efforts by S&C "to deny employment" to an individual because the individual witnessed alleged acts of discrimination.

15. The Charney Complaint also gratuitously and maliciously reveals confidential and non-public information concerning S&C obtained by Charney as an employee of S&C. In Annex A to the Charney Complaint, Charney attaches S&C's Partnership Agreement, dated January 1, 1994. The Partnership Agreement is confidential, and Charney had no legitimate purpose or reason to have access to it. Charney is not nor has he ever been a partner of S&C. Charney is not mentioned in the Partnership Agreement. The Partnership Agreement does not discuss or address any of Charney's terms and conditions of employment. There is no good faith reason to attach a copy of this entire document to the Charney Complaint because in its entirety it is not relevant to Charney's allegations.

16. Charney has attempted to disseminate the allegations in the Charney Complaint as broadly as possible, including posting notice of the Charney Complaint on the Greedy Associates board on infirmation.com at or about the time that he filed the Charney Complaint as well as posting the Charney Complaint on his own personal website.

17. Charney has not limited his impermissible disclosures to the Charney Complaint. In various interviews and discussions with the media, Charney continues to disseminate client confidences, secrets, and confidential information.

18. In a January 17, 2007 interview with the Canadian television program SqueezePlay, Charney continued to disclose information about a client transaction. This was a transparent effort to disparage S&C, allegedly based on confidential personnel decisions within S&C, and unrelated to any allegation of discrimination or retaliation by Charney. It also, if believed, could create embarrassment for the client.

19. On January 24, 2007, The Wall Street Journal published an article discussing S&C, which disclosed that confidential documents had been taken from S&C and

provided to the Journal. The Wall Street Journal article refers to a confidential internal S&C slide show presentation made to partners on associate development and morale issues that had been prepared in part by the partner whose office was next door to Charney's office. The partner had kept a copy of this document in a file relating to confidential firm matters. This presentation is missing from the partner's file, and the file appears to have been put out of order. The Wall Street Journal Online Law Blog, on January 24, 2007 reported that a handwritten note on the copy of the presentation obtained by the Journal said, "We are breaking away from the pack in the wrong direction." Charney, at paragraph 63 of his Complaint, alleged the following: "As one S&C partner describes S&C's rankings, S&C 'is breaking away from the pack in the wrong direction[.]'"

20. Although Charney had no right to access to the internal documents leaked to The Wall Street Journal, he was able to access the files containing these documents and, upon information and belief, he misappropriated such documents from S&C and provided them to The Wall Street Journal. Charney had no legitimate business purpose to possess these documents.

21. S&C is also aware that Charney e-mailed from his S&C e-mail account to his home e-mail accounts a large number of confidential, sensitive, and non-public documents, as well as S&C work product. These documents contain non-public information concerning a number of clients of S&C and their consideration of potential actions or transactions that have not been disclosed, as well as numerous attorney-client communications on many sensitive topics.

22. Charney also quotes from or characterizes confidential S&C performance reviews in his Complaint. Charney had no legitimate access to these documents, and his assertion in paragraph 136 of his Complaint that he received two of these reviews "via U.S.

mail", without mentioning the source, appears to be a transparent effort to construct a "legitimate" reason for his possession of documents that either he or a source improperly removed from S&C's files.

23. In late November 2006, Charney also requested his secretary to make two copies of every document in his archived S&C e-mail folders. When the secretary suggested that, given the volume of documents in those folders, it would be more practical to copy the archives to a CD or DVD, but that copying to a CD or DVD would require approval of an S&C partner, Charney refused the suggestion. The secretary began making copies, but decided that the request was suspicious and stopped work, despite repeated requests from Charney to complete the copying effort. Charney had no legitimate business reason to obtain two copies of all of his archived documents.

24. In paragraph 2 of his Complaint, Charney alleges that he has tapes relevant to facts alleged in his Complaint.

25. Through his dissemination of sensitive and non-public information, Charney has caused and, unless restrained, will continue to cause substantial and irreparable damage to S&C's clients and S&C in violation of his fiduciary duties as well as Disciplinary Rule 4-101(b) of the New York Code of Professional Responsibility, 22 N.Y.C.R.R. § 1200.19(b), for which S&C has no adequate remedy at law.

**AS AND FOR A SECOND CAUSE OF ACTION**  
**(Breach of Contract)**

26. S&C repeats and restates each of the above allegations as if fully set forth herein.



27. On or about September 18, 2003, Charney and S&C executed an agreement concerning confidentiality of information received by Charney in the course of his employment with S&C.

28. Pursuant to this agreement, in consideration for continued employment with S&C, Charney agreed to keep confidential all non-public information concerning clients of S&C and S&C.

29. Charney also agreed that he would not disclose such information without prior approval by a partner of S&C.

30. S&C's confidentiality policy requires employees to keep confidential all sensitive non-public information concerning S&C clients and S&C.

31. Charney's disclosure of non-public information about S&C's clients and S&C breached the agreement dated September 18, 2003, as well as S&C's policies, causing S&C to suffer damage in an amount yet to be determined.

**AS AND FOR A THIRD CAUSE OF ACTION**  
**(Unlawful Conversion)**

32. S&C repeats and restates each of the above allegations as if fully set forth herein.

33. Charney was not legally or otherwise entitled to possess certain of the S&C confidential material in his possession, including the S&C Partnership Agreement, and upon information and belief, client and S&C confidential documents, and audiotapes that Charney claims he has.

34. Upon information and belief, Charney obtained a copy of these materials through unlawful means.

35. Charney's possession and refusal to return these materials amounts to unlawful conversion.

36. As a direct and proximate result of Charney's actions, S&C has suffered damages in an amount yet to be determined.

**AS AND FOR A FOURTH CAUSE OF ACTION**  
**(Replevin)**

37. S&C repeats and restates each of the above allegations as if fully set forth herein.

38. At the time of the commencement of this action, and at all times hereinafter mentioned, S&C was and still is the owner and entitled to the immediate possession of the S&C confidential material in Charney's possession, including the S&C Partnership Agreement, and upon information and belief, client and S&C confidential documents, and audiotapes that Charney claims he has.

39. On information and belief, Charney is in possession of the documents and materials described above and wrongfully detained and still detains such documents and materials from S&C.

40. The detention by Charney of any of the documents and materials described above is wrongful.

WHEREFORE, S&C respectfully demands judgment against Charney as follows:

- a. preliminarily and permanently enjoining Charney and those in concert with him from revealing or disclosing the confidences or secrets of S&C's clients;
- b. preliminarily and permanently enjoining Charney and those in concert with him from revealing or disclosing materials in any form constituting S&C attorney work product or proprietary non-public information of S&C;
- c. directing Charney to return to S&C all documents, files, and other materials in any form in his possession, custody, or control that refer or relate to S&C's clients;
- d. directing Charney to return to S&C all documents, files, and other materials in any form in his possession, custody, or control that constitute S&C attorney work product or contain proprietary non-public information of S&C;
- e. awarding compensatory damages on S&C's first and second causes of action in an amount to be determined at trial or inquest;
- f. awarding compensatory and punitive damages on S&C's first and third causes of action in an amount to be determined at trial or inquest;
- g. adjudging that S&C is the owner and entitled to the immediate possession of the documents and materials described in S&C's fourth cause of action, and that such documents and materials be delivered to S&C;
- h. awarding S&C pre- and post-judgment interest as allowed by law;
- i. awarding S&C the costs and disbursements of this action; and
- j. granting such other relief as to the Court may seem just and proper.

Dated: New York, New York  
February 1, 2007

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*Of Counsel.*

VERIFICATION

STATE OF NEW YORK    )  
                                  ) ss.:  
COUNTY OF NEW YORK )

RICHARD H. KLAPPER, being duly sworn, deposes and says:

I am a member of Sullivan & Cromwell LLP, plaintiff in the within action. I have read the foregoing complaint and state that it is true to my own knowledge, except as to matters alleged upon information and belief, and as to those matters I believe it to be true.

  
Richard H. Klapper

Sworn to before me this  
1st day of February 2007

  
NOTARY PUBLIC

FRANK NUNZO DABOSTINO  
NOTARY PUBLIC, State of New York  
No. 010A4606102  
Qualified in New York County  
Commission Expires May 11, 2010