

**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION**

ELIZABETH BERG, as trustee for the)
bankruptcy estate of John Wiesner,)

Plaintiff,)

v.)

NEXUS RISK MANAGEMENT INC.,)
NEXUS RISK MANAGEMENT LP.,)
CI INVESTMENTS INC., and)
CHARLES GILBERT,)

15 C 11534

Defendants.)

CI INVESTMENTS, INC.,)

Third Party Plaintiff,)

v.)

CHARLES GILBERT,)
NEXUS RISK MANAGEMENT INC., and)
NEXUS RISK MANAGEMENT LP.,)

Third Party Defendants.)

MEMORANDUM OPINION

CHARLES P. KOCORAS, District Judge:

This matter comes before the Court on the motion of Defendant and Third Party Plaintiff, CI Investments Inc. (“CI”) for leave to file a crossclaim against Defendants and Third Party Defendants, Charles Gilbert (“Gilbert”), Nexus Risk

Management Inc., and Nexus Risk Management LP (collectively, “Nexus Defendants”). Dkt. 58. For the following reasons, the motion is granted.

BACKGROUND

On July 28, 2014, John Wiesner (“Wiesner”) filed a “voluntary petition for relief under chapter 7 of the Bankruptcy Code.” Dkt. 75-1, Ex. 2, ¶ 1. Plaintiff, Elizabeth Berg (“Berg”) “was appointed as successor chapter 7 trustee of the Estate of John Wiesner on November 7, 2014.” *Id.*, ¶ 8. Subsequently, Berg “not personally but solely as the chapter 7 trustee” of Wiesner’s estate (“Estate”) filed a Second Amended Complaint against the Nexus Defendants and CI. Dkt. 69, p. 1. CI attached the Second Amended Complaint¹ to its Reply In Support Of Its Motion To File A Cross Claim. Dkt. 75-1, Ex. 2. Berg alleges in the Second Amended Complaint that “[f]rom 2010 until 2013, [Wiesner] was a contractor working as a Risk Management Strategist for the Chicago Board Options Exchange (‘CBOE’).” Dkt. 75-1, Ex. 2, ¶ 31. While employed by the CBOE, Wiesner supposedly developed intellectual property including “software, code, formula, and other elements utilized in trading strategies.” *Id.*, ¶ 32. Specifically, Berg claims that Wiesner “developed Realized Historical VIX, Static Volatility Surfaces, Static Delta Gamma, Weez-a-tron and skewed volatility parameters in a modified Black-Scholes formula; a formula he had

¹ Berg and the Nexus Defendants’ Response references the “First Amended Complaint,” but CI’s Motion For Leave To File Cross-Claim and its Reply In Support Of Its Motion To File A Cross Claim reference a “Second Amended Complaint.” According to the docket, an Answer was filed in response to the Second Amended Complaint. Moreover, Exhibit 2 of CI’s Reply in Support Of Its Motion To File A Cross Claim appears to be the Second Amended Complaint. Thus, the Court assumes the operative complaint is the Second Amended Complaint.

originally written in 2002.” *Id.*, ¶ 32. Berg also alleges that “[t]he Static Volatility Surfaces and skewed volatility parameters in a modified Black-Scholes formula are trade secrets” that belong to Wiesner “and have only ever been used with the understanding that they would stay a secret and not be made available to the public.” *Id.*, ¶ 34.

Between 2010 and 2013, Wiesner also allegedly produced a trading strategy using the intellectual property that he had already created. *Id.*, ¶ 35. Subsequently, Wiesner “created software to implement [that] trading strategy.” *Id.*, ¶ 36. This required Wiesner to code his trading strategy into an Excel Spreadsheet, known as “The Giant Spreadsheet.” *Id.*, ¶ 37. Wiesner later used The Giant Spreadsheet, and other intellectual property he had previously created, to make the Validation Tool and the Live Trading Sheet. *Id.*, ¶ 40. According to the Second Amended Complaint, Berg has had “copyrights granted for The Giant Spread Sheet [], Static Delta Gamma [], Weez-a-tron [], and Realized Historical VIX [], and [she] owns the rights and title to the copyright in the software code, spreadsheets, and other intellectual property.” *Id.*, ¶ 41. The Estate purportedly owns Wiesner’s intellectual property and Berg “is the real party in interest to pursue claims and causes of action” that relate to Wiesner’s intellectual property. *Id.*, ¶ 19.

Nexus Risk Management Inc. is a Canadian corporation “engaged in developing software for companies to use for hedging variable annuities.” *Id.*, ¶¶ 21, 22. Nexus Risk Management Inc. is the parent company of Nexus Risk

Management LP, an Illinois limited partnership with its principal place of business in Chicago. *Id.*, ¶¶ 23–24. Gilbert is a Canadian citizen, and he is the president and majority owner of Nexus Risk Management Inc. *Id.*, ¶ 29. CI is a Canadian corporation that operates as a mutual fund company. *Id.*, ¶¶ 26–27.

In 2009, “CI contracted with Nexus Risk Management Inc. to develop a new trading strategy for its new G5|20 mutual fund.” *Id.*, ¶ 42. However, according to the Second Amended Complaint, Gilbert and Nexus Risk Management Inc. were unable to provide CI with “a satisfactory and effective trading strategy” between 2009 and 2010. *Id.*, ¶ 46. Consequently in 2010, Gilbert contacted Wiesner to create a trading strategy for CI. *Id.*, ¶ 47. Wiesner allegedly created “a trading strategy for CI,” which incorporated intellectual property that he had previously developed. *Id.*, ¶ 48. “For the creation of a trading strategy and the continued use of his intellectual property,” Berg claims that Wiesner “was promised twenty percent [] ownership of the Nexus parent company, Nexus Risk Management Inc., and a base salary when the fund started generating revenue.” *Id.*, ¶ 49.

Over time, Wiesner’s involvement with the Nexus Defendants and CI supposedly changed from merely creating the trading strategy to also implementing the strategy into usable software. *Id.*, ¶ 52. According to Berg, this required Wiesner to use The Giant Spreadsheet, which was copyrighted and contained his trading strategy. *Id.*, ¶¶ 41, 53. During the time that Wiesner was working as a contractor for CI, he also maintained his contract position with the CBOE. *Id.*, ¶¶ 51, 58. However,

in June of 2013, “CI required [Wiesner] to quit as a contractor with the CBOE” and work full time for the Nexus Defendants because once the fund went live, Wiesner “would be directing trades to the CBOE floor,” which could have caused a potential conflict of interest. *Id.*, ¶ 58.

On October 1, 2013, CI’s G5|20 fund went live. *Id.*, ¶ 61. During the three years prior to launching CI’s G5|20 fund, Wiesner’s strategy was apparently “developed, improved upon, and modified.” *Id.*, ¶ 60. Wiesner was terminated on November 12, 2013 and never received the twenty percent ownership in Nexus Risk Management Inc. that he was allegedly promised. *Id.*, ¶¶ 62–63.

After CI’s G5|20 fund went live, on January 27, 2014, CI and Nexus Risk Management, Inc. “entered into an amended and restated software license agreement, under which CI made a \$1,750,000.00 equity investment in Nexus Risk Management Inc. and \$500,000.00 loan to the Nexus entities in exchange for a Canadian exclusive license to use,” what Berg claims is Weisner’s intellectual property. *Id.*, ¶ 66. However, shortly thereafter, “[o]n November 14, 2014, CI terminated its relationship with the Nexus” Defendants. *Id.*, ¶ 68. The Asset Purchase Agreement, attached as Exhibit A to Berg’s and the Nexus Defendants’ Response And Objection To Motion For Leave, contains the terms of the termination. *See* Dkt. 73, Ex. A. Pursuant to the Asset Purchase Agreement, Nexus Risk Management Inc. agreed to transfer ownership of the Nexus Risk Platform to CI. *Id.*, p. 2. The Nexus Risk Platform includes “all right, title and interest in and to . . . [Nexus Risk Management Inc.’s]

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