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Case No. 5176-CS

IN THE COURT OF CHANCERY OF THE STATE OF DELAWARE

WILLIAM SEIBOLD, Plaintiff, v. CAMULOS PARTNERS LP, CAMULOS PARTNERS GP LLC, and CAMULOS CAPITAL LP, Defendants.	)	C.A. No. 5176-CS
CAMULOS PARTNERS LP and CAMULOS CAPITAL LP, Defendants-Counterclaim Plaintiffs, v. WILLIAM SEIBOLD, Plaintiff-Counterclaim Defendant, and NOROTON CAPITAL MANAGEMENT LLC, NOROTON EVENT DRIVEN OPPORTUNITY FUND LP, and NOROTON PARTNERS LLC, Counterclaim Defendants.	)	

MEMORANDUM OPINION

Date Submitted: August 17, 2012
Date Decided: September 17, 2012

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STRINE, Chancellor.

I. Introduction

This is a post-trial decision in a fight between money managers, which seems to belie any notion that financial logic drives behavior, to the exclusion of other sentiments, like hurt, anger, and resentment. The emotions of the parties have led to a suit the expense of which seems to be disproportionate to what is financially at stake. In this decision, I address the myriad issues the feuding parties raise and resolve this Delaware part of their legal spat.[1]

The plaintiff in this case, William Seibold, is a former partner of and senior analyst at the investment management arm of a hedge fund, in which he was also a limited partner. Seibold became disgruntled there, and decided to launch a competing fund. After he resigned from his role as senior analyst and withdrew as a partner of the investment manager, he also requested to withdraw as a limited partner of the fund and sought payment of his capital investment in the fund in accordance with the terms of the limited partnership agreement. The investment manager, however, had discovered that while Seibold was still working for it, he had downloaded and emailed to himself thousands of files and other items of work product belonging to the investment manager, some of them confidential and many of them not. As I will find, Seibold did that because he thought these files might come in handy when starting his new venture. The investment manager believed that this conduct constituted a violation of certain contracts that Seibold had signed with it, in addition to a breach of his fiduciary duties. So, the investment manager caused the proceeds generated from the redemption of Seibold's

[1] The parties have another legal battle ongoing in Connecticut.

capital account to be diverted to its own bank account, because it wanted to be able to exercise a self-granted set-off against those proceeds should it prevail against Seibold on its claims in court.

The ardor that these parties have to fight has manifested itself in the way they litigate. Despite the fact that the investment manager (i) recognizes that it must return Seibold the proceeds from his capital account that it withheld from him, (ii) offers no evidence that Seibold used or disclosed any confidential information that would harm it in a material way, (iii) no longer makes any claim for monetary relief, and (iv) has a remaining claim for injunctive relief seeking to require Seibold to return whatever confidential information he still has on his system that rings hollow (since its own begrudging litigation concessions, such as dropping its damage claims, suggest that any such information is now immaterial), the parties have been unable to reach an amicable resolution of their issues. And so, here we are.

In this case, I am asked to resolve whether the fund, the fund's general partner, and the investment manager are liable in contract and tort for the withholding of Seibold's money. I am also asked whether Seibold breached his contractual obligations and fiduciary duties to the investment manager as a result of his conduct related to his departure from the investment manager, and whether the competing fund can be held liable in tort for Seibold's breaches. For the reasons set forth in this opinion, I find in favor of Seibold on all his claims, except his demand for an excessively high rate of prejudgment interest. I also find that Seibold breached the confidentiality agreement he signed as an employee of the investment manager, but only in limited ways that he has

since for the most part cured, and that he breached his fiduciary duties to the investment manager by taking its property for the benefit of the competing fund. But, because Seibold's conduct did not harm the investment manager, and because the investment manager cannot prove that Seibold profited from that fiduciary breach, the counterclaimants' request for disgorgement fails. Finally, I find that although some of Camulos' litigation conduct entitles Seibold to fee shifting in this case, Seibold's own early litigation conduct was not blameless, and equity counsels letting the fees lie where they now rest.

II. Factual Background

These are the facts as I find them after trial.[2]

[2] I note here that the parties have engaged in a post-post-trial dispute about the admissibility of certain exhibits. Counsel for Seibold has represented to me that only six exhibits are still subject to dispute. Letter from Richard J. Thomas to the Court, C.A. No. 5176-CS, 45977771 (Aug. 17, 2012). Camulos seeks to exclude these six items of evidence on the ground that they are irrelevant, and hence inadmissible under Delaware Rule of Evidence 402.

Seibold responds that Camulos has not made proper, timely objections to these exhibits, and I agree. "A party making an objection to the introduction of evidence must specify a proper basis for exclusion" of the evidence. *Weedon v. State*, 647 A.2d 1078, 1082 (Del. 1994); *see also* D.R.E. 103(a)(1) (objections should be "timely"). Otherwise, the objection is waived. *Gregory v. State*, 616 A.2d 1198, 1200 (Del. 1992).

Here, Camulos did not make timely, specific objections to the introduction of the six exhibits still in issue. Although Camulos signaled its possible objection to the admissibility of these exhibits before trial, by marking the number "402" (to represent Delaware Rule of Evidence 402) next to the exhibits on the exhibit log, these objections were never made to the court in the form of a motion, an objection at trial, or even before or during the post-trial argument. Five of the exhibits (JX 6, 11, 61, 100, 339) were used without objection in trial. *See* Tr. 65:23 (Brennan – Cross); 98:8 (Brennan – Cross); 157:22 (Seibold); 158:6 (Seibold); 167:10 (Seibold). The sixth exhibit was cited in Seibold's post-trial briefing. P. Post-Tr. Reply Br. at 26 (citing JX 427).

Camulos only made specific objections to the exhibits' admissibility several weeks after post-trial argument. Letter from Seth A. Neiderman to the Court, C.A. No. 5176-CS, 45765370 (Aug. 7, 2012). Therefore, I rule that Camulos has not fulfilled its requirement of filing specific and timely objections to the exhibits, and its objections are deemed waived. But, even if the objections were not waived, I would find that all but two of the exhibits are relevant. These two

A. The Key Players

Just as its lovely harbors are crowded with their expensive, less than fully utilized vessels, so are southern Connecticut's towns filled with wealthy money managers. This case is about the falling out between two of them, Richard Brennan and William Seibold.

The fund in this case is defendant Camulos Partners LP (the "Fund"), which is a Delaware limited partnership whose assets are invested in distressed debt securities. The investment manager is defendant Camulos Capital LP ("Camulos Capital"), also a Delaware limited partnership. The Fund is managed by its general partner, defendant Camulos Partners GP LLC (the "General Partner"), a Delaware limited liability company. The General Partner delegated to Camulos Capital the authority to manage the investment of the Fund's assets. When it is not necessary to distinguish among the Fund, the General Partner, or the Investment Manager, I will simply refer to them collectively as "Camulos."[3]

As is typically the case with affiliate entities such as those under the Camulos umbrella, there is substantial overlap in their key managerial personnel. Richard Brennan, who is not a party in his individual capacity, is a founding partner and portfolio manager of Camulos Capital, and a member of the General Partner. And Seibold is a former limited partner of the Fund, a former member of the General Partner, and a former

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exceptions are JX 6 and JX 11, which are emails sent by Seibold before he co-founded Camulos. I have not relied on these two exhibits in the course of deciding this case, and I have accorded the other exhibits the weight that they deserve.

[3] For the sake of simplicity, I refer to Camulos in all citations to briefs simply as the defendant, rather than the defendant-counterclaim plaintiff. Likewise, I refer to Seibold in citations to briefs as the plaintiff, rather than the plaintiff-counterclaim defendant.

partner and employee of Camulos Capital. He was also the founding partner of Noroton Event Driven Opportunity Fund LP, the hedge fund he started after leaving his employment with Camulos Capital. Noroton Capital Management LLC was that fund's investment manager, and Noroton Partners LLC its general partner. All the Noroton entities are counterclaim defendants, along with Seibold. I refer to the three Noroton entities as "Noroton" unless otherwise indicated.

B. The Formation Of Camulos

From 2002 to 2005, Seibold and Brennan worked together at Soros Fund Management within a group specializing in distressed debt securities.[4] Brennan was the Group's portfolio manager and trader, and Seibold its most senior analyst.[5] The group was successful, and by 2005 it had more than $1 billion in assets under management and was generating substantial returns.[6] In mid-2005, Brennan led the effort to spin the group out from Soros and rebrand it as Camulos. In that effort, Brennan sought to keep Seibold, and asked him to join as a founding partner of the new fund. Seibold initially objected to Brennan having a majority stake, but later agreed to join him.[7] At Camulos Capital, Brennan and Seibold reprised their roles as portfolio manager and senior credit analyst, respectively.[8]

At this time, the parties entered into a series of agreements related to the formation of the Camulos entities. These agreements are central to this dispute and constitute the

[4] Pre-Tr. Stip. ¶ II.4.
[5] *Id*.
[6] JX 14 (Camulos Capital pitchbook (May 2005)).
[7] Tr. 45:17-46:18 (Brennan – Cross); JX 20 (email from Brennan to Seibold (May 13, 2005)).
[8] Pre-Tr. Stip. ¶ II.5.

basis for the parties' contract claims against each other. Although I will provide a more detailed discussion of the specific provisions at issue later, I now summarize the agreements and their purpose:

- The Fund was governed by the Third Amended and Restated Limited Partnership Agreement (the "Limited Partnership Agreement"), which was entered into by the General Partner and each limited partner, including Seibold.[9]

- The General Partner delegated certain investment authority to Camulos Capital under the "Investment Management Agreement," dated July 19, 2005.[10]

- As an employee of Camulos Capital, Seibold entered into an annual "Confidentiality Agreement," by and between himself and Camulos Capital "and each of its affiliates and advisees."[11]

- In addition, Seibold signed the "Subscription Agreement" in his capacity as a limited partner, authorizing the General Partner to enter into the Limited Partnership Agreement on his behalf.[12] The Subscription Agreement contains an indemnification provision in favor of the Fund or its affiliates for failure to fulfill an agreement in "any … document" provided to the Fund.[13]

C. Seibold Grows Dissatisfied, Gets The Idea To Start A Competing Hedge Fund, And Collects Documents

Initially, Seibold was successful at Camulos. But it is evident that, over time, he became dissatisfied, and made up his mind to leave. Camulos claims that Seibold was planning his departure from Camulos by mid-2006, and eventually became so ineffectual

[9] JX 424 (Limited Partnership Agreement (June 1, 2006)) [hereinafter LPA].
[10] JX 128 (Investment Management Agreement (July 19, 2005)) [hereinafter IMA].
[11] JX 76 (Confidentiality Agreement (Dec. 18, 2006)) [hereinafter CA].
[12] Pre-Tr. Stip. ¶ II.12; JX 420 (Subscription Agreement (Nov. 1, 2005)) [hereinafter SA].
[13] SA ¶ 6.

that he was falling asleep at his desk.[14] But Camulos has produced no evidence that Seibold grew disillusioned with Camulos in 2006, beyond its witnesses' statements at trial, which came across as more self-serving than convincing, especially considering that it paid Seibold handsomely for his work in 2006.[15] Indeed, at the beginning of 2007 it handed Seibold a $2.8 million bonus for the previous year, which was an odd thing to do if Seibold's work had been substandard.[16] Although Camulos claims it was simply being charitable, I do not find that persuasive, and believe that Brennan only gave Seibold the bonus Brennan believed was warranted.[17]

The story I find more convincing is that Seibold's dissatisfaction with Camulos began when Brennan made it clear that Camulos was Brennan's hedge fund, and not Brennan's and Seibold's together. Leaving Soros and starting Camulos with Brennan was, in some ways, like striking out on his own (or so Seibold thought). But, events in December 2006 demonstrated to Seibold that he was not really a co-leader of a business venture of his own making, and that Brennan – the one who put up most of the money – would be the singular dominating force.

The critical moment seems to have occurred in December 2006 when Brennan asked Seibold to sign an agreement to create a new three-person "Management Committee" that would run Camulos Capital in the event that Brennan "cease[d] to be

[14] Defs. Post-Tr. Op. Br. at 12.
[15] *E.g.*, Tr. 21:15-16 (Brennan). *See also Pilot Point Owners Ass'n v. Bonk*, 2010 WL 3959570, at *3 (Del. Ch. Oct. 7, 2010) (noting that trial testimony by an interested party may be given less weight).
[16] Pre-Tr. Stip. ¶ II.28; JX 409 Ex. D (Jan. 27, 2012)).
[17] Tr. 31:7-17 (Brennan).

actively involved in supervising" Camulos' investment programs.[18] Seibold was surprised that this committee did not include him as a member, because he was a co-founder of Camulos and the holder of the next biggest stake in it after Brennan.[19] He was particularly dismayed that the committee included, in his place, Brennan's wife, which reinforced the theme that it was Brennan's fund.[20] These actions seem to have impelled Seibold to focus seriously on starting his own fund, a professional goal that he had always toyed with, now that he realized Camulos was not his venture. In fact, the next day Seibold contacted an employment lawyer with a view to potentially departing from Camulos.[21]

This lawyer came recommended by Seibold's close friend and brother-in-law, Nigel Ekern.[22] Ekern was experienced in investment banking and private equity,[23] and Seibold and Ekern both testified that the thought of running a hedge fund together was something that they had kicked around for many years, but the timing had never been right for it.[24] In addition to renewing his discussions about starting a fund with Ekern,

[18] JX 81 (supplement to term sheet (Dec. 19, 2006)); JX 99 (Private Placement Memorandum (Sept. 2006)).
[19] Tr. 265:7-22 (Seibold).
[20] *Id*.
[21] JX 477 (logged email from Seibold to Steven Frederick concerning legal advice on relationship with Camulos (Dec. 21, 2006)).
[22] JX 82 (email exchange between Ekern and Seibold (Dec. 20, 2006)) (Ekern writes to a friend seeking the contact information of an attorney for "someone in Stamford who needs representation as soon as practicable," and then forwards that information to Seibold).
[23] Tr. 635:2-636:7 (Ekern).
[24] *See* Tr. 179:3-6 (Seibold) ("[Ekern] and I had always thought at some point geez, if we were both available at the same time, you know, boy, wouldn't it be great to do something together."); *id.* 639:14-20 (Ekern) ("Bill [Seibold] and I had been close friends for 25 years. During those years I would offer to Bill, 'You know, if you ever were going to run a hedge fund, I would run it

Seibold revealed his intentions to start a new fund to other people whom he trusted, in an effort to test the waters and gauge their reactions. For example, on January 11, 2007, during a Camulos business trip to Europe, Seibold met with a friend of his, Andrew Hunter, who also worked for the Australian investment bank Macquarie. At that meeting, the two discussed whether Hunter would be interested in "participat[ing] in [his] new fund."[25]

The meeting with Hunter seems to have encouraged Seibold, because once he returned to the United States, he and Ekern took a number of steps in quick succession related to the launch of their future fund. On January 15, Ekern reserved the name "Noroton," along with another potential name for the fund.[26] The next day, Seibold and Ekern emailed with a third friend, Richard Johnson, about meeting to discuss the launch over dinner the following night. Johnson was an industry veteran, experienced at raising money for investment vehicles.

Johnson was also interested in joining the Noroton team as a founding partner. To that end, he suggested that they "should be prepared to discuss structure, timing, parameters, [and] rules of engagement [with] investors."[27] Johnson also wrote that he

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for you. That's what I'm good at.' And so Bill obviously knew that I was inclined to want to do that, if that time ever came to pass.").

[25] *See* JX 143 (email from Hunter to Seibold (Mar. 28, 2007)); *see also* JX 101 (receipt for "Dinner with Macquarie" (Jan. 11, 2011)); JX 102 (email from Seibold to Hunter (Jan. 12, 2007)). Although Seibold tried to dance around the true nature of that meeting during his trial testimony, later correspondence between Hunter and Seibold confirms that they discussed the possibility of Macquarie investing in what would become Noroton. JX 156 (email from Hunter to Seibold (Mar. 28, 2007)).

[26] JX 460 (Noroton American Express expenses).

[27] JX 103 (email from Johnson to Seibold (Jan. 16, 2007)).

had some "hedge fund [presentations]"[28] that he could share with the group, in addition to pages that he had put together "to be used in the future."[29] For his part, Ekern was interested in seeing what Johnson had prepared, and emailed to the group that he "would love to see what [he] put together, if possible."[30] On January 28, 2007, Seibold consulted with his attorney about a draft resignation letter, in preparation for his eventual departure.[31] This evidence leads me to conclude that it was no longer a question if Seibold would leave Camulos to launch Noroton, but when.

It is human nature, of course, to want to keep your options alive, and to make sure that you don't have bear the full cost of leaving your current job for a new one when that new one is somewhat speculative with no guaranteed chance of success.[32] So Seibold bided his time. He continued to work at Camulos with an eye towards Noroton, until it made sense to call it quits with Camulos, which he eventually did on May 8, 2007.[33]

During the months preceding his departure, Seibold gathered a wide variety of information that he thought might be useful when starting Noroton. He completed large downloads of information from the Camulos Capital server to his work-issued laptop, which he kept with him after his resignation, and emailed home documents from his

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[28] *Id*.
[29] *Id*.
[30] JX 105 (email from Seibold to Ekern (Jan. 17, 2007)).
[31] JX 477 (logged email from Seibold to Steven Frederick concerning departure from Camulos (Jan. 28, 2007)).
[32] Alas, as is of course true in love as in money, many hold on to the thing they have until they are sure about the next thing.
[33] *E.g.*, JX 80 (email from Ekern to Richard Shapiro (June 4, 2007)) (referring to a conversation that the two had a "few months back" in which Ekern "was afraid to confirm" that he and Seibold were launching a new fund because Seibold "had not yet split from Camulos").

Camulos email account to his personal email account.[34] In broad strokes, these categories of documents and information included: (1) Camulos' current and prospective investor lists (the "Investor Lists");[35] (2) a firm-wide database of Outlook contacts, which Seibold had Camulos IT personnel burn him a disk of to download at home (the "Distressed Debt Contacts");[36] (3) Camulos' lists of counterparty contacts, meaning the financial institutions and the representatives working there who serve as Camulos' trading partners (the "Counterparty Contacts");[37] (4) Camulos' marketing presentations that it used when meeting with potential investors (the "Marketing Presentations");[38] (5) Camulos' lists of current investments and investment ideas (the "Credit Trading Reports" and "Investment Ideas");[39] and (6) operating and other structural documents relating to Camulos, such as the partnership agreements and ERISA and other questionnaires (the "Infrastructure Documents").[40] Seibold also emailed certain documents to Ekern, on dates throughout that time period, to use to get a sense of what documents to create for Noroton.[41]

Seibold's download and email activity over the course of those months for each of these categories of information was a topic of much dispute at trial, and is central to

[34] *E.g.*, JX 123 (email forwarded by Seibold with Camulos trading positions as of February 1, 2007 (Feb. 5, 2007)).
[35] JX 444-49 (investor lists).
[36] *See* JX 111 (email from Seibold to Mark D'Amico, Camulos Capital IT (Jan. 31, 2007)).
[37] *E.g.*, JX 107 (email forwarded by Seibold (Jan. 25, 2007)); JX 108 (email forwarded by Seibold (Jan. 25, 2007)).
[38] *E.g.*, JX 114-22 (downloads of Camulos fundraising presentations (Feb. 1, 2007)).
[39] *E.g.*, JX 170-71 (emails from Camulos employees to Seibold concerning investment ideas (Apr.-May 2007)); JX 174-75 (emails to Camulos with trading reports (May 7, 2007)); JX 177 (Camulos email with list of buyout candidates (May 8, 2007)).
[40] *E.g.*, JX 57 (email with Camulos structure chart (Aug. 15, 2006)).
[41] *E.g.*, JX 99 (email from Seibold to Ekern (Jan. 7, 2007)).

Camulos' counterclaims for breach of contract and breach of fiduciary duty. Seibold testified that his downloads and emails were entirely for Camulos-related purposes, but I cannot accept that testimony wholeheartedly. For example, as to a download of over 1,000 files that occurred on February 1, 2007, Seibold testified that he must have done so to prepare for a work trip, and that he often updated the files on his laptop before he travelled so that he could have access to them away from the office.[42] But, when asked at trial, Seibold could not identify a trip that he had planned around that time, and could not come up with another explanation for that download.[43] Rather, the evidence generally suggests that during this period of time when he was having serious planning discussions with Ekern and Johnson about forming Noroton, Seibold thought that it might come in handy to start compiling a resource bank of documents and other information that could prove useful in that endeavor. Some of the information he took was clearly sensitive to Camulos, most of it much less so.[44]

As I will discuss later in the opinion, however, whether Seibold used any of the sensitive information and whether any such use harmed Camulos are separate questions, and ones that I largely answer in the negative. It is sufficient for now to find that Seibold's downloading and emailing of Camulos work product was at least in part for the potential benefit of Noroton, rather than solely for Camulos-related use.

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[42] *See* Tr. 474:9-476:16 (Seibold – Cross).
[43] *See id.* 476:17-19 (Seibold – Cross) ("Q. Do you have an explanation for why you took so many marketing presentations [on February 1, 2007]? A. No, I don't.").
[44] *See* JX 413 (Alix Partners forensic analysis report (Apr. 3, 2012)) (download of Camulos Capital partner "bios"; download of Camulos Capital "performance" spreadsheet).

D. Seibold Leaves And Launches Noroton, Taking Hardware And Documents With Him

On May 8, 2007, Seibold resigned from Camulos Capital,[45] and dedicated all his efforts to starting Noroton. To that end, he hired legal advisors to draft the Noroton operating documents, and began to get in front of potential investors.[46] He had little problem with that task, because he worked with and hired third-party marketers (specifically, Anchor Asset Management) and prime brokers who suggested names of investors to solicit.[47]

Noroton secured seed funding from an investor, RMF Hedge Fund Ventures, which agreed to put up a large percentage of the capital, and so Noroton launched on July 1, 2008.[48] But, Noroton was only in operation for 18 months, after which it returned all investments to its external investors.[49] Despite a good performance in the second half of 2008, Noroton lost over $20 million from operations in 2009.[50]

[45] Pre-Tr. Stip. ¶ II.28.
[46] *E.g.*, JX 180 (email from Michael Silverton at Macquarie to Seibold (May 9, 2007)) (referring to a potential meeting that day); JX 204 (email from Johnson to Seibold and Ekern (June 14, 2007)) (noting that meetings were set up in front of potential investors); JX 210 (Email from Johnson to Seibold and Ekern (June 27, 2007)) (setting up meetings with potential investors).
[47] *E.g.*, JX 214 (emails from Seibold to Johnson (June 29, 2007)) (discussing hiring of Anchor); JX 222 (email from Jay Adames at Goldman Sachs to Seibold (July 24, 2007)) (introducing himself to Seibold and "want[ing] to reach out to you" to "learn more about your business plans, and discuss how we (GS Prime Brokerage) can be helpful," and informing Seibold that "we have already [received] a number of inquiries from several of our hedge fund investors, and wanted to discuss [that] further with you").
[48] JX 330 (RMF Indicative Term Sheet (Apr. 21, 2008)).
[49] JX 365 (Noroton auditors' report (June 4, 2010)).
[50] JX 373 (email from Ekern to Seibold (May 27, 2010)); JX 365 (Noroton audited financial statements, year end 2009 (June 4, 2010)).

E. The Parties Wrangle Over The Return Of Confidential Information – And Cash

On May 25, 2007, two and a half weeks after Seibold's departure from Camulos, Richard Holahan, the COO and general counsel of Camulos Capital, wrote to Seibold to "confirm [his] resignation as a partner" and request the return of any confidential information in Seibold's possession.[51] For his part, Seibold wanted the return of the approximately $3.2 million he had invested as capital in the Fund, together with the $1.45 million it had gained in value.[52] On June 25, 2007, Seibold wrote to Holahan to request the return of his capital investment.[53] But about this time, Camulos Capital became aware of Seibold's downloading and emailing activity, and that Seibold had not yet returned any Camulos Capital documents that he took with him.[54] On August 2, 2007, after further correspondence between Holahan and Seibold, in which the parties disputed the terms of Seibold's departure,[55] an attorney for Camulos Capital demanded the return of "all Camulos Confidential Information" that Seibold had retained.[56]

In response to this letter, Seibold looked through the files on his computer and determined what information that he took was confidential.[57] He then put that information on to an external drive, gave that external drive to his attorney, and deleted the information from his computers.[58] Seibold's attorney wrote to Camulos' attorney

[51] Pre-Tr. Stip. ¶ II.31.
[52] *Id.* ¶ II.9. The $3.2 million is a combination of his original $2.2 million investment plus a later $1 million investment in February 2006.
[53] JX 209 (letter from Seibold to Holahan (June 25, 2007)).
[54] JX 226 (letter from Jonathan Sulds to Seibold (Aug. 2, 2007)).
[55] JX 209 (letter from Seibold to Holahan (June 25, 2007); JX 221.
[56] JX 226.
[57] Tr. 492:20-493:5 (Seibold – Cross).
[58] *Id.*

describing that sequence of events, and informing Camulos that he now held all Camulos documents that Seibold had previously possessed.[59]

Camulos Capital also believed that Seibold was in breach of a non-compete provision, the validity of which is subject to the Connecticut litigation.[60] On October 12, 2007, Holahan wrote back to Seibold, on paper with Camulos Capital letterhead, alleging that Seibold breached the "various agreements" he had signed while at Camulos, including the Confidentiality Agreement and the Camulos Capital partnership agreement, and that "accordingly" his investment in the Fund would be "withdrawn from the Fund at the end of th[e] year," and "placed in escrow pending resolution of the matter."[61] Specifically, Holahan alleged that Seibold had "failed to return confidential information that [he had] misappropriated from Camulos Capital LP notwithstanding several attempts by [Camulos] attorneys to retrieve the same."[62]

Seibold then provided formal written notice of his redemption of his capital investment on October 30, 2007.[63] His investment was redeemed by the Fund's administrator on December 31, 2007, as provided by the Limited Partnership Agreement, generating net proceeds of $4,662,422.46 (the "Withdrawal Proceeds").[64] Two facts are particularly important to note at this stage. First, the investment was redeemed freely and in full, with none of it retained in the Fund. Second, the Withdrawal Proceeds were not

[59] JX 234 (letter from Steven Frederick to Jonathan Sulds (Aug. 17, 2007)).
[60] Tr. 184:21-185:8 (Seibold); Defs. Post-Tr. Op. Br. at 16 n.3.
[61] JX 259 (letter from Holahan to Seibold (Oct. 12, 2007)).
[62] *Id*.
[63] Pre-Tr. Stip. ¶¶ II.15-16.
[64] *Id*. ¶ II.17.

distributed to Seibold. Instead, Camulos Capital directed the administrator to distribute the Withdrawal Proceeds to Camulos Capital's own operating account.[65] This account was not titled in Seibold's name, and Camulos Capital could freely access the Withdrawal Proceeds and withdraw them for its own use.[66] Camulos concedes that Camulos Capital diverted and held on to the Withdrawal Proceeds in order to offset any claims it may have against Seibold due to his alleged breaches of contract and fiduciary duty stemming from his departure from Camulos Capital.[67]

At the beginning of 2010, after litigation began, Seibold, at his own expense, hired forensic computer experts to take images of many of the electronic storage devices that he had used over the last few years, including his Camulos laptop, his Noroton laptop, his office computers, and his servers.[68] In March 2011, Seibold's forensic experts then wiped clean some devices in their entirety, *after they had been imaged*, including the Camulos laptop, using military-standard data cleansing software, and wiped designated

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[65] The fund administrator informed Seibold in a letter dated January 22, 2008, that the Fund and Camulos Capital had told the administrator that the proceeds would "be deposited into a Camulos general partnership account." *Id.* ¶ II.19. On February 14, 2008, however, the fund administrator notified Seibold that the money had been deposited "[p]er Camulos Capital, L.P.," into a "Camulos Capital Operating Account" at JP Morgan Chase. *Id.* ¶ II.20.

[66] *See* JX 318 (OpHedge redemption notice (Feb. 14, 2008)) ("Per Camulos Capital LP / Redemption Proceeds Credited to JP Morgan Chase"); *see also* JX 310 (letter from Robert Harris, General Counsel of OpHedge, to Seibold (Jan. 22, 2008)); Tr. at 91:10-92:2 (Brennan – Cross) ("Q. Mr. Seibold's investment in the Camulos fund was withdrawn effective January 1, 2008, right? A. Yes. Q. The Camulos fund did not remit the proceeds to Mr. Seibold, though, did it? A. No. … Q. The administrator for the fund distributed the proceeds to an operating account of Camulos Capital? A. Yes. Q. And it did so at the direction of Camulos Capital? A. Yes.").

[67] *See* Tr. 92:13-19 (Brennan – Cross) ("Q. You held on to [the Withdrawal Proceeds] to offset your counterclaims against Mr. Seibold? A. We were still waiting for the return of the documents. Q. But you held on them to offset the counterclaims; right? A. Yes.").

[68] JX 404 (UHY data cleanse certification (Jan. 13, 2012)); JX 413 (Alix Partners forensic analysis report (Apr. 3, 2012)).

data from other devices.[69] About the same time, in January 2011, Camulos Capital put the Withdrawal Proceeds into an escrow account, where they remain.[70] According to the "Escrow Agreement," interest on the Withdrawal Proceeds is payable to Camulos Capital.[71]

In June 2011, the parties entered into a "Return Stipulation," in which they agreed that Seibold would have been deemed to have returned thousands of Camulos documents, whether or not such documents were ever found to be confidential.[72] In December 2011, Camulos served on Seibold a request for production in which Camulos demanded "each machine … in Seibold's and/or Noroton's possession … that ever, at any time, contained Camulos-related Documents or other materials that Seibold obtained from Camulos."[73] In response, Seibold's attorney sent to Camulos the wiped Camulos laptop, a forensic image of the information on the laptop, and Seibold's Camulos-issued Blackberry (which had not been wiped) in early 2012 for Camulos' own analysis.[74] Following this, Camulos carried out an exhaustive forensic investigation.[75]

F. Litigation Ensues

In December 2009, Seibold filed suit in Delaware to recover the Withdrawal Proceeds.[76] Specifically, he sued the Fund and the General Partner for breach of the

[69] JX 404.
[70] Pre-Tr. Stip. ¶ II.23.
[71] JX 380 ¶ 4 (Escrow Agreement (Dec. 28, 2010)).
[72] JX 384 (Return Stipulation (June 14, 2011)).
[73] JX 402 (Defendants'/Counterclaim Plaintiffs' Eighth Request for Production (Dec. 22, 2011)).
[74] JX 407 (letter from Nicholas Rohrer to David Holahan (Jan. 20, 2012)).
[75] JX 413 (Alix Partners forensic analysis report (Apr. 3, 2012)).
[76] Pre-Tr. Stip. ¶¶ I.1, II.8.

Limited Partnership Agreement for their failure to distribute the Withdrawal Proceeds to him, and Camulos Capital for tortious interference with contract and unjust enrichment.[77]

Camulos Capital and the Fund counterclaimed and asserted breach of contract and breach of fiduciary duty claims against Seibold for his non-return, improper use, and disclosure of Camulos' confidential information, and asserted claims against Noroton for tortious interference with contract, unjust enrichment, and conversion claims relating to those breaches.[78] Camulos initially demanded damages against Seibold and Noroton for the use of confidential information.[79] After trial, however, it dropped all demands for monetary relief, with the exception of seeking disgorgement of part of Seibold's earnings.[80]

III. Legal Analysis

Consistent with the way that the parties briefed this case and their approach at trial, I first analyze Seibold's affirmative claims for breach of contract against the Fund and the General Partner, along with his related tort claims against Camulos Capital. I then analyze the counterclaims against Seibold for breach of fiduciary duty and breach of contract arising from his departure from Camulos, along with the tort claims against Noroton.

[77] *Id*. ¶ I.2.
[78] *Id*. ¶ I.3.
[79] Defs. Pre-Tr. Op. Br. at 20-21, 26.
[80] Defs. Post-Tr. Op. Br. at 15.

A. Seibold's Affirmative Claims Against The Fund, The General Partner, And Camulos Capital

The original claim in this litigation raised a simple question: Did the Fund and the General Partner breach the Limited Partnership Agreement by not distributing to Seibold the Withdrawal Proceeds once he submitted a contractually proper withdrawal request? The answer to this I find is "yes."

1. The Key Terms Of The Limited Partnership Agreement

The Limited Partnership Agreement sets out the process by which a limited partner who is leaving the Fund can withdraw its capital investment. Under § 5.5(b) of the Agreement, a limited partner can withdraw "all or part of its Interest effective as of the close of business on the last Business Day of any calendar quarter." The limited partner must give the General Partner at least sixty days' notice before any effective date of withdrawal.[81] Section 5.5(e) of the Agreement provides that the withdrawn money will "normally" be paid to the limited partner within 45 days of the effective date of withdrawal.[82]

The Agreement specifies the ways in which the General Partner can delay or limit a limited partner's withdrawal of its funds. Sections 4.1(f) and (g) of the Agreement provide that when the General Partner is permitted to act in its "sole discretion" it "shall be entitled to consider only such interests and factors as it desires, including its own interests, and shall … have no duty or obligation to give any consideration to any interest

[81] LPA § 5.5(b).
[82] *Id.* § 5.5(e).

of or factors affecting the [Fund] or the Limited Partners,"[83] and that "[e]very power vested in the General Partner … shall be construed as a power to act in its sole and absolute discretion, except as otherwise expressly provided herein."[84] And § 5.5(i) of the Agreement grants the General Partner the right to suspend or limit a partner's right to withdrawal if the General Partner "determines that such suspension or limitation is warranted by extraordinary circumstances." The Fund is a Delaware limited partnership, and the Limited Partnership Agreement specifically provides that it will be governed by Delaware law.[85]

2. The Breach Of The Limited Partnership Agreement

Seibold requested to redeem his partnership interest on October 30, 2007.[86] In accordance with the Partnership Agreement, his interest in the fund was redeemed at the end of that quarter, on December 31, 2007, generating the Withdrawal Proceeds.[87] Under § 5.5(e), Seibold would have expected to receive the Withdrawal Proceeds no later than February 14, 2008, forty-five days after the effective date of withdrawal. Seibold did not receive the Withdrawal Proceeds, because they were withheld from him at the direction of Camulos Capital.[88]

Camulos claims that the Withdrawal Proceeds were properly withheld under § 5.5(i) of the Agreement, which gives the General Partner the right to suspend or limit

[83] *Id.* § 4.1(g).
[84] *Id.* § 4.1(f), (g).
[85] *Id*. § 8.5.
[86] Pre-Tr. Stip. ¶¶ II.15-16. Although he had made a request before then, it was not made in a procedurally proper way. JX 209 (letter from Seibold to Holahan (June 25, 2007)).
[87] Pre-Tr. Stip. ¶ II.17; LPA § 5.5(b).
[88] *See* Tr. 92:13-19 (Brennan – Cross).

the distributions from the Fund when warranted by "extraordinary circumstances."[89] Camulos claims that Seibold's conduct surrounding his departure from Camulos Capital – specifically, his alleged breach of the Confidentiality Agreement and his fiduciary duties to Camulos Capital and the Fund – constitutes an "extraordinary circumstance[]" that permitted the General Partner to withhold the Withdrawal Proceeds. It then argues that even if Camulos Capital made that "determination," as the evidence overwhelmingly suggests, rather than the General Partner as required by § 5.5(i), that was contractually proper because Camulos Capital was acting under the authority delegated to it by the General Partner under the Investment Management Agreement. Finally, it argues that even if Seibold's activities do not constitute an "extraordinary circumstance[]" as measured by an objective standard, the separate "sole discretion" provision allows the General Partner (and thus Camulos Capital as its delegate) to make that "determin[ation]" in its "sole discretion," without regard to the interests of the Fund or Seibold, and so the determination is immune from judicial review.

Seibold, for his part, seeks to hold both the Fund and the General Partner liable for return of the Withdrawal Proceeds under the Limited Partnership Agreement. He also seeks to hold Camulos Capital liable for tortious interference with contract because it was not acting under the authority delegated to it by the Investment Management Agreement when it diverted the Withdrawal Proceeds, but rather as a third party interfering with the contractual relationship between Seibold and the Fund.

I agree with Seibold, for the following reasons.

[89] Defs. Post-Tr. Op. Br. at 29-30.

First, Seibold's conduct leading up to and following his departure from Camulos Capital does not constitute an "extraordinary circumstance" for purposes of the Limited Partnership Agreement. Camulos would have me read that phrase as encompassing any circumstance that is "out of the ordinary," no matter its connection to the Fund. In that way, so it says, because Seibold's misappropriation of Camulos' documents and its confidential information is "out of the ordinary," or "unusual," the provision is triggered, and so the General Partner was entitled to hold on to the Withdrawal Proceeds. But to say that something is an "extraordinary circumstance" in everyday life is not the same thing as saying that something is an "extraordinary circumstance" for purposes of a general partner's ability to withhold a withdrawing limited partner's capital investment.

Contract terms are not read in isolation, but must be read in the context of the contract and in light of the parties' reasonable expectations going into that agreement.[90] It would be unreasonable to say that a general partner could withhold a limited partner's investment under § 5.5(i) because of any extraordinary circumstance on the Earth. Rather, § 5.5(i) requires that the extraordinary circumstance be linked to the Fund in a way that would "warrant" the withholding of the capital investment. This is illustrated by the example of an extraordinary circumstance set forth in the Partnership Agreement, which was that the General Partner could limit withdrawals "in circumstances where [it] is unable fairly to value the Partnership's [*i.e.*, the Funds] assets due to extreme market

[90] *Kaiser Aluminum Corp. v. Matheson*, 681 A.2d 392, 395 (Del. 1996) ("Consistent with Delaware's objectivist theory of contracts, '[t]he true test is … what a reasonable person in the position of the parties would have thought it meant.'") (citation omitted); *see also West Willow-Bay Court LLC v. Robino-Bay Court Plaza LLC*, 2007 WL 3317551, at *1 (Del. Ch. Nov. 2, 2007) ("[Judges'] goal is to find the common, shared intent of the contracting parties.").

conditions."[91] Here, Camulos has not offered any evidence to suggest that it ever had a good faith belief that Seibold's conduct harmed *the Fund* in any material, let alone "extraordinary" way, such that the Fund's withholding of the Withdrawal Proceeds was "warranted." Rather, the Withdrawal Proceeds were withheld clearly for the benefit of Camulos Capital, as an investment manager, not the Fund, as evidenced by the fact that they were put in a Camulos Capital bank account, with interest running to Camulos Capital, not the Fund, and then in an escrow account with interest still running to Camulos Capital, not the Fund. Indeed, Brennan admitted before trial that Camulos Capital retained the Withdrawal Proceeds as a set-off against its counterclaims.[92] The reality that the Fund was not harmed by Seibold's conduct is reinforced by the fact that Seibold *was* redeemed as an investor in the Fund, and the Fund was thereby impoverished, but Camulos Capital, the investment manager, then took the funds under its own dominion.

Second, and relatedly, I reject Camulos' argument that the "sole discretion" standard displaces the "extraordinary circumstance" test so as to allow the General Partner, or Camulos Capital as its delegate, to make the "extraordinary circumstance" determination without regard to any interests other than its own. It's actually just the opposite. That is, the contractually mandated requirement that there be an "extraordinary circumstance" before the General Partner can withhold or limit a limited partner's withdrawal of its investment is an "except[ion]" from the general rule that the General

[91] LPA § 5.5(i).
[92] Brennan Dep. Tr. 154:7-12.

Partner is given the power to act in its "sole discretion" without regard for the interests of the Fund or the limited partners.[93] To hold otherwise would make the requirement that there be an "extraordinary circumstance" superfluous, by allowing the General Partner to withhold distributions for any reason, however trifling or conflicted, it deemed sufficient.[94] Rather, the extraordinary circumstance the General Partner finds must be one affecting the Fund, and does not authorize the General Partner to protect the selfish interests of its investors and affiliates at the expense of a withdrawing Fund investor.

Third, and although disputed by Camulos, both the Fund and the General Partner are liable for the breach of contract. As provided by statute, the Fund and the General Partner are both parties to the contract.[95] Moreover, despite Camulos' contention, the General Partner clearly signed the contract on behalf of itself.[96] Under principles of partnership law, the general partner is liable to the other partners if it breaches the partnership agreement, unless the partnership agreement provides otherwise.[97] Camulos

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[93] LPA § 4.1(g).

[94] "Under general principles of contract law, a contract should be interpreted in such a way as to not render any of its provisions illusory or meaningless." *Sonitrol Hldg. Co. v. Marceau Investissements*, 607 A.2d 1177, 1183 (Del. 1992); *see also Delta & Pine Land Co. v. Monsanto Co.*, 2006 WL 1510417, at *14-15 (Del. Ch. May 24, 2006) ("It is, of course, a familiar principle that contracts must be interpreted in a manner that does not render any provision 'illusory or meaningless.'") (citing *O'Brien v. Progressive N. Ins. Co.*, 785 A.2d 281, 287 (Del. 2001)).

[95] *See* 6 *Del. C.* § 17-101.

[96] Defs. Post-Tr. Op. Br. at 29 n.5; LPA at 40 (signature page).

[97] In Delaware, the partners to a limited partnership have "the broadest possible discretion in drafting their partnership agreement." *Gotham P'rs L.P. v. Hallwood Realty P'rs L.P.*, 817 A.2d 160, 170 (Del. 2002) (citation omitted). The partners may use their partnership agreement to order the relations between them and eliminate "any and all liabilities for breach of contract and breach of duties (including fiduciary duties)" that would otherwise arise. 6 *Del. C.* § 17-1101(d). *See Gotham P'rs L.P.*, 817 A.2d at 170 ("[W]e have recognized that, by statute, the parties to a Delaware limited partnership have the power and discretion to form and operate a limited partnership 'in an environment of private ordering' according to the provisions in the limited

has not made, and has therefore waived, any argument that the Limited Partnership Agreement exculpated it for its breach.[98] Therefore, the General Partner and the Fund are jointly and severally liable for the contract breach.[99]

Fourth, Camulos Capital is jointly and severally liable for the contract breach under a theory of tortious interference. For starters, Camulos argues that Camulos Capital was acting as a delegate of the General Partner when it caused the Withdrawal Proceeds to be diverted to its own bank account. But Camulos has offered no evidence in support of that theory, which it conjured up for the first time in its post-trial briefing. The notion that Camulos Capital had the authority to divert the Withdrawal Proceeds under the Investment Agreement is unconvincing, and the Investment Agreement's provisions are the only evidence that the General Partner delegated to the Investment Manager any authority. The Investment Management Agreement appoints the Investment Manager "as investment advisor and trading manager with respect to the assets and liabilities of the partnership,"[100] and "consistent with" that appointment, gives it the authority to "supervise, direct and effect the investment management, acquisition and disposition of

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partnership agreement.") (citation omitted). Thus, the limited partnership agreement is central to the limited partnership model because the contract can supplant entirely or modify in substantial part a general partner's default obligations to the limited partnership and the limited partners. For that very reason, it is vital that those contractual duties that are owed to the limited partners are honored and enforceable. It is therefore close to astonishing for Camulos to argue that the General Partner was not contractually bound to honor the Limited Partnership Agreement and be responsible for breaching it, to the detriment of a limited partner.

[98] *See Emerald P'rs v. Berlin*, 2003 WL 21003437, at *43 (Del. Ch. Apr. 28, 2003), *aff'd*, 840 A.2d 641 (Del. 2003) ("It is settled Delaware law that a party waives an argument by not including it in its brief.").

[99] LPA § 3.2(b) ("The Partnership (and not the General Partner) shall be responsible for the return of any such amounts [*i.e.*, the Withdrawal Proceeds] in accordance with this Agreement.").

[100] IMA ¶ 1(a).

assets of the Partnership."[101] That delegation most closely tracks the General Partner's powers and responsibilities for "all investment and investment management decisions to be undertaken on behalf of the [Fund]."[102] That is, Camulos Capital is given the authority to handle the day-to-day trading activities of the Fund that the Fund engages in to make money.

But, nothing in that Agreement purports to delegate to Camulos Capital the General Partner's authority to "manag[e] and administer[] the affairs of the [Fund],"[103] which is articulated separately from the General Partner's power over "investment management decisions."[104] And nothing purports to delegate to the Investment Manager decisions related to the relationship status of a limited partner and the Fund itself. Thus, Camulos Capital's strained, after-the-fact claim that it was acting under the authority delegated to it by the General Partner when it caused the Withdrawal Proceeds to be diverted to its own bank account for its own benefit is not convincing. For those reasons, Camulos Capital is liable for tortious interference, because its intentional act of seizing control over Seibold's Withdrawal Proceeds was unjustified and a significant factor in the breach of the Limited Partnership Agreement.[105]

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[101] *Id*.
[102] LPA § 4.1(a).
[103] *Id*.
[104] *Id*.
[105] The elements of a claim of tortious interference with contractual relations are "(1) a valid contract; (2) about which defendants knew; (3) an intentional act that is a significant factor in causing the breach of such contract; (4) without justification; (5) which causes injury." *Beard Research, Inc. v. Kates*, 8 A.3d 573, 605 (Del. Ch. 2010) (citing *AeroGlobal Capital Mgmt., LLC v. Cirrus Indus., Inc.*, 871 A.2d 428, 437 n.7 (Del. 2005)).

Finally, I say a word about Seibold's claim of unjust enrichment against Camulos Capital. Seibold argues that Camulos Capital was unjustly enriched, and he was correspondingly impoverished, because Camulos Capital received the Withdrawal Proceeds into its bank account. But, this claim overlooks the nature of the remedy of unjust enrichment. Unjust enrichment is in essence a gap-filling remedy, which can be sought in "the absence of a remedy provided by law."[106] Here, Seibold has another "remedy provided by law," because he has successfully obtained a legal remedy, by prevailing in his claim of tortious interference with contract. Therefore, there is no gap for the unjust enrichment remedy to fill, and the unjust enrichment claim fails.

B. Camulos' Affirmative Claims Against Seibold And Noroton

Having settled Seibold's affirmative claims against the Fund, the General Partner, and Camulos Capital in his favor, I now turn to whether the Fund and Camulos Capital as counterclaimants (together in this section, "Camulos") prevail in their claims against Seibold for breach of contract and breach of fiduciary duty, and against Noroton for tortious interference with contract, conversion, and aiding and abetting breach of fiduciary duty.

[106] The elements of a claim of unjust enrichment are "(1) an enrichment, (2) an impoverishment, (3) a relation between the enrichment and the impoverishment, (4) an absence of justification, and (5) the absence of a remedy provided by law." *Nemec v. Shrader*, 991 A.2d 1120, 1130 (Del. 2010). *See also Fleer Corp. v. Topps Chewing Gum, Inc.*, 539 A.2d 1060, 1062 (Del. 1988) (noting that the remedy of unjust enrichment exists to protect against the "retention of money or property of another against the fundamental principles of justice or equity and good conscience") (citation omitted).

1. Camulos' Claims Against Seibold For Breach Of Contract

Camulos contends that Seibold breached his confidentiality obligations under two contracts: (i) the Limited Partnership Agreement he signed as a limited partner of the Fund; and (ii) the Confidentiality Agreement he signed as an employee of Camulos Capital.[107] Because the Confidentiality Agreement was the focus of the trial in the case, and thus in the parties' briefing, I deal with it first.

a. Did Seibold Breach The Confidentiality Agreement?

i. The Relevant Contractual Terms

The Confidentiality Agreement was entered into between Seibold and "Camulos Capital LP, and each of its affiliates and the advisees (referred to [collectively] as 'Camulos')."[108] In that Agreement, Seibold agreed that "[a]s a condition of [his] employment or other relationship with Camulos, [he] [would] abide by all of the terms and conditions of [the] Agreement."[109] The Confidentiality Agreement is governed by New York law.[110]

The Confidentiality Agreement governs the treatment of "Confidential Information" learned by Seibold during his employment with Camulos Capital, and sets forth three restrictions at issue in this dispute. First, the Confidentiality Agreement prohibits Seibold from "improperly us[ing] … any Confidential Information" for a period

[107] Although Camulos initially asserted claims for breach of the Camulos Capital partnership term sheet, it no longer pursues those claims in this court, in favor of addressing them in the related Connecticut litigation. *See* Defs. Post-Tr. Op. Br. at 16.
[108] CA pmbl.
[109] *Id.* ¶ 2.
[110] *Id.* ¶ 16.

of five years after his employment with Camulos ends;[111] second, it prohibits Seibold from "improperly … disclos[ing] any Confidential Information" for an equivalent five year period;[112] and third, it requires Seibold to "return" to Camulos "all written or electronic Confidential Information" upon "completing" his "employment" with Camulos Capital.[113]

But to violate any of these provisions, the information taken, used, or disclosed must be confidential within the meaning of the contract. The Confidentiality Agreement defines such Confidential Information to include: (i) "confidential or proprietary information about Camulos or its affiliates;" (ii) "confidential, proprietary or sensitive, nonpublic information about Camulos;" (iii) "any confidential, proprietary or sensitive nonpublic information You learn while in Our employ or during any other relationship with Camulos;" (iv) and "any confidential, proprietary or sensitive nonpublic information You learn from Camulos portfolio companies and potential investments Camulos is considering."[114]

The Confidentiality Agreement goes on to offer the following categories of information as specific examples of Confidential Information: (i) "Camulos' current, past or contemplated: market views; analysis; trading models; or portfolio positions;" (ii) "the identity of Camulos' current, past or contemplated external managers;" (iii) "credit information or confidential contractual information;" (iv) "the terms and provisions of

[111] *Id.* ¶¶ 5, 8.
[112] *Id.* ¶¶ 5, 8.
[113] *Id.* ¶ 11.
[114] *Id.* ¶ 4.

Camulos' confidential business records including but not limited to Camulos manuals and forms, employee records, financial data and any intellectual property;" and (v) "any other non-public information concerning Camulos, its management, employees, or business operations."[115]

Certain categories of information are explicitly exempted from the Confidentiality Agreement's definition of Confidential Information. These include information (i) "that is or becomes lawfully and appropriately available other than by virtue of a breach of this Agreement;" (ii) "that was already known to [the employee] prior to entering into employment or other relationship with Camulos provided such information was not subject to separate confidentiality requirements;" or (iii) "that is no longer entitled to confidentiality as a result of the manner in which it is disclosed by the owner or originator of the information."[116]

Seibold agreed in the Confidentiality Agreement that Camulos would be "damaged irreparably" if he were to breach any of its terms,[117] and that Camulos would be entitled to pursue injunctive relief for any such breach.[118]

ii. A Preliminary Note: The Critical Issues Concerning Possession, Use, And Disclosure

Camulos contends that Seibold breached the Confidentiality Agreement by failing to return, by using, and by disclosing Confidential Information.[119] As a threshold matter,

[115] *Id.*
[116] *Id.* ¶ 7.
[117] *Id.* ¶ 17.
[118] *Id.*

the factual issue of what Seibold did with the information he took is not fairly in dispute. Seibold concedes that he possessed the information at issue after he left Camulos Capital, and the documentary evidence reveals that he forwarded certain presentations and documents to his brother-in-law Nigel Ekern, which were not returned. This means that to the extent that any of the information he took was Confidential Information within the meaning of Confidentiality Agreement, Seibold breached his document return obligations in the contract.

Thus, for purposes of determining Seibold's liability under the Confidentiality Agreement, the critical questions that remain are: (i) what information taken constitutes Confidential Information, and (ii) what Confidential Information did Seibold use or disclose? I now answer those questions in turn for each category of information that Camulos has focused on: (a) the Investor Lists; (b) the Distressed Debt Contacts; (c) the Counterparty Contacts; (d) the Marketing Presentations; (e) the Credit Trading Reports and Investment Ideas; and (f) the Infrastructure Documents.

iii. Did Seibold Use Or Disclose Confidential Information?

a. Investor Lists

First, Camulos' contract claim premised on the Investor Lists can be easily dispensed with. As the reader may recall, when Seibold left Camulos Capital he took

[119] To recover for a breach of contract under New York law, Camulos must establish "the existence of a contract, the plaintiff's performance under the contract, the defendant's breach of that contract, and resulting damages." *JP Morgan Chase v. J.H. Elec. of N.Y., Inc.*, 893 N.Y.S.2d 237, 239 (App. Div. 2010).

with him lists of current and potential Camulos investors.[120] That information was made available to him as a partner and senior level employee of Camulos Capital. In some cases, these Investor Lists contained information relating to each current investor's total amount invested and profits made to date,[121] as well as each investor's individual username and password necessary to access the Camulos website to review their investment history.[122] Although no doubt these Investor Lists are "confidential, proprietary or sensitive nonpublic information" learned by Seibold "while in [Camulos Capital's] employ,"[123] and thus qualify as Confidential Information, there is no evidence that Seibold used or disclosed the Investor Lists in violation of that Agreement.

At trial and during the post-trial argument, Camulos argued that Seibold used the Investor Lists for purposes of soliciting investors for Noroton, focusing specifically on the potential investor list that Seibold compiled for RMF Hedge Fund Ventures on May 14, 2008, to convince it that Seibold had other investors lined up if Noroton were to be seeded by it.[124] To support that theory, Camulos produced a chart showing that 79 out of the 95 names that appeared on that RMF list as prospective investors in Noroton overlapped with names on the Investor Lists.

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[120] *See* JX 444-49 (investor lists). The lists concerned current and potential investors in the Camulos Master Fund, the original Camulos fund started by seed money from Soros.
[121] JX 449 (Current Camulos Investors).
[122] JX 447 (Current Camulos Investors).
[123] CA ¶ 4; *see also Kuroda v. SPJS Hldgs., L.L.C.*, 2010 WL 925853, at *3 (Del. Ch. Mar. 16, 2010) (noting that a fund's investor and client list is "high-level proprietary and confidential information").
[124] JX 333 (email from Ekern to Christoph Landolt of RMF, with seed list (May 14, 2008)).

But the important evidence in the record contradicts the simplistic argument made by Camulos. Most relevantly, Seibold hired third-party marketers and prime brokers shortly after his departure in 2007 to perform exactly that function of finding prospective Noroton investors.[125] Likewise, Seibold's friend and capital raiser Richard Johnson also emailed Seibold names of potential investors to speak with about Noroton. The names that these third-party marketers and prime brokers sent to Seibold appeared on the RMF Seed List, and Seibold was given that information starting in June 2007, long before he developed the RMF Seed List. That there was a substantial overlap between the names on the RMF Seed List and Camulos' Investor Lists is unsurprising in light of the fact that *these prime brokers were the same as the prime brokers used by Camulos*,[126] as Camulos concedes, and thus would naturally recommend similar investors for hedge funds operating in the distressed debt investment space, as Camulos and Noroton were. Indeed, at post-trial argument, Camulos recognized that it was "not … impossible that [Seibold] got some of these names from somebody else."[127] Although there was a handful of names that Seibold could not prove by documentary evidence that he learned through prime brokers or third-party sources, Camulos has not persuaded me that these names were taken from the Investor Lists given the clear weight of the evidence that Seibold had access to names from third-party sources and thus had no need to use Camulos' Investor

[125] *See* JX 214 (emails from Seibold to Johnson (June 29, 2007)) (discussing hiring of Anchor).
[126] Post-Tr. 107:9-13; JX 222 (email from Jay Adames at Goldman Sachs to Seibold (July 24, 2007)); JX 231 (email from Russel Miron at Bear Stearns to Seibold (Aug. 07, 2007)).
[127] Post-Tr. 108:22-23.

Lists.[128] The contemporaneous written evidence, less tainted by the self-interest that tends to make a party's trial testimony less reliable, also shows that Seibold was hesitant to pitch to Camulos investors given the tense situation between him and Camulos after his departure.[129] This belies any notion that he was willing to plunder the Investor Lists for people to contact, especially when names of potential investors were being sent to him from respected third-party sources who wanted his business.

I make one final observation regarding the fact that Seibold took with him a document that contained Camulos investor usernames and passwords. Clearly, Seibold should not have taken such a sensitive document with him after he left Camulos Capital, but I do not find that Seibold used it in developing his own investor lists, let alone to access investor accounts to check their financial statements or the like. Camulos contends that Seibold used this list to methodically check off names to remind himself whom to contact regarding investing in Noroton, and points to certain handwritten circles over and check marks next to the names listed in that document, as one would make if performing such a task.[130] But, Seibold denied such an allegation in his deposition testimony,[131] and was not asked further about it at trial. At post-trial argument, counsel for Seibold represented to the court that the handwriting on the document belonged to an associate at the firm, who was going through the list for discovery purposes, and I have

[128] *See* Tr. 205:2-214:9 (Seibold).
[129] *E.g.*, JX 230 (email from Seibold to Christine McCann at Goldman Sachs (Aug. 10, 2007)) ("I am currently not going after [Camulos'] investors until I have a bit more clarity on whether we will be able to negotiate a settlement. … For now, let's hold back on those [investor] names.").
[130] *See* Post-Tr. 100:23-101:02.
[131] Seibold Dep. Tr. 345:19-24.

no reason to doubt that representation.[132] Therefore, I do not find that Seibold used this document.

b. Distressed Debt Contacts

Likewise, Camulos' contention that Seibold used the Distressed Debt Contacts to identify the specific people to get in touch with regarding prospective investments in Noroton finds no support in the evidence. The Distressed Debt Contacts refer to the firm-wide Microsoft Outlook database of contacts contributed by all Camulos Capital employees (including Seibold), which Seibold took in the form of a burned compact disk.[133] Although, I assume, the individual contacts that did not belong to Seibold (*i.e.*, those contacts with whom Seibold did not have a personal relationship) constitute Confidential Information in the sense that they were "non-public information concerning Camulos … or [its business operations],"[134] Camulos' argument on use is unconvincing.

Before explaining why, it is worth noting that there is a tension in the Confidentiality Agreement. Like a non-compete agreement, a confidentiality agreement must be carefully read, so as not to stifle competition unreasonably.[135] The primary definition of "confidential information" in the Confidentiality Agreement does not cover non-public information unless that information is also "sensitive" or meets other

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[132] Post-Tr. 101:6-21.
[133] *See* Tr. 164:5-10 (Seibold) ("Q. What were the distressed debt contacts? A. When we joined Soros, basically everybody put their contacts into a big pot, you know, their business cards and put together a contact list.").
[134] CA ¶ 4.
[135] *See Reed, Roberts Assocs. Inc. v. Strauman*, 40 N.Y.2d 303, 307 (Ct. App. 1976) (noting that restrictive covenants not to compete are subject to "judicial disfavor," because they may lead to the "loss of a man's livelihood" (citation omitted)); *Ashland Mgmt. Inc. v. Altair Inv. NA, LLC*, 59 A.D.3d 97, 104 (N.Y. App. Div. 2008) (applying the same principles to a restrictive covenant not to use confidential information) (citations omitted).

criteria.[136] The catch-all at the end of the specific examples in the Confidentiality Agreement contradicts, not illustrates, that primary definition. Many of the contacts were arguably not sensitive, because these are high-profile market players who seek to place or raise capital and whose identity many, like Seibold and his funders, would have known.

As to use of that information, Camulos' main argument in support of its claim that Seibold used the Distressed Debt Contacts is that these contacts would be useful to him in figuring out the actual humans with whom to speak when calling up the prospective investors, which were all entities.[137] Without the Distressed Debt Contacts, Seibold supposedly would have been left dialing some general number like 1-800-GOLDMAN, and so he needed the Distressed Debt Contacts to find the right people within each institution to make the investment happen. Camulos would have me believe that the prime brokers and third-party marketers that gave Seibold the names of potential investors that they had relationships with did not also have the contact information of the specific people to reach out to at those places. But, the evidence is clear that the prime brokers and third-party marketers did in fact provide Seibold with specific names of people to get in touch with and their contact information once Seibold showed an interest in meeting with a certain potential investor.[138] The evidence is also clear that Seibold

[136] CA ¶ 4.
[137] *See* Post-Tr. 109:7-14.
[138] *E.g.*, JX 230 (emails with Christine Hamner at Goldman Sachs (Aug. 9-14, 2007); JX 235A (email from Marc Mendelson at Bear Stearns to Seibold (Aug. 17, 2007)); JX 240 (email from Richard Johnson to Seibold (Aug. 29, 2007)); JX 243 (email to Christine Hamner at Goldman Sachs (Sept. 7, 2007)).

relied on the contact information provided by his prime brokers and third-party marketers when reaching out to set up meetings.[139]

Camulos' story on the usefulness of the Distressed Debt Contacts fails for another reason. There would be little, if any, utility in calling up individuals with whom Seibold had no prior relationship based solely on the fact that their contact information was in the Distressed Debt Contacts database and they therefore had some relationship, at some point, with someone at Camulos Capital. How would Seibold know the nature of that relationship, or whom the contact even belonged to at Camulos Capital? For many of the Distressed Debt Contacts produced in this litigation, there are no discernible characteristics on the Outlook file, such as a comment in the comments field, that would reveal that information. Nor has Camulos cited any evidence in the record indicating that Seibold got in touch with anyone *with whom he did not personally have a prior professional relationship*. In other words, Camulos has not offered any evidence in support of its theory of use other than its general protestations that he must have used them, and its argument fails for that reason.

c. Counterparty Contacts

The Counterparty Contacts comprise the list of names of the financial institutions with which Camulos has entered into trades. That list is sensitive, non-public information relating to who Camulos' trading partners are, and thus qualifies as Confidential Information because it is "confidential, proprietary or sensitive nonpublic information"

[139] *E.g.*, JX 243 (email to Christine Hamner at Goldman Sachs (Sept. 7, 2007)) (beginning email "Just to give you a status update on the people you introduced us to").

that Seibold learned "while in [the] employ" of Camulos Capital.[140] Again, however, Camulos has failed to prove that Seibold used the Counterparty Contacts to develop Noroton's counterparty contact list.

The only evidence of use that Camulos could muster at trial and post-trial argument are the facts that: (i) there are 15 overlapping counterparties between Camulos' Counterparty Contacts and Noroton's counterparty lists; and (ii) Noroton's marketing presentations tout that Seibold has an "extensive network of contacts."[141] As to the latter, Camulos wishes to have me read into that fairly mundane bullet point something much more illicit, and construes it as secretly conveying that Seibold has an extensive network of Camulos counterparty contacts that he stole from Camulos Capital, rather than ones that he has developed during his own nearly two decades of experience in the financial industry. That interpretation is strained, at best, and finds no reliable support in the record evidence.

As to the 15 overlapping names, which include well-known institutions like Bank of America, Citigroup, and Credit Suisse,[142] Seibold has testified convincingly that he developed the Noroton counterparty lists through the relationships with the sales contacts at the counterparties that he had developed over the years, and through the affirmative

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[140] CA ¶ 4. Seibold's argument that the Counterparty Contacts were not confidential because the contact information for the names and institutions on that list could be found from external sources, such as Bloomberg, misses the point. *See* Tr. 418:21-419:1 (Seibold – Cross). The import of the Counterparty Contacts is not the phone numbers listed for an individual, but the fact that the list reveals the identity of Camulos' trading partners, and that is what makes it confidential and non-public.

[141] *See* Post-Tr. 92:19; JX 197 (email from Seibold to Ekern (May 24, 2007)).

[142] *See* JX 487 ("Camulos/Noroton Counterparty Overlap").

efforts of sales people who had worked with Seibold at Camulos to reach out to him once he left.[143] Seibold's version of events accords with the reality that once word got around that Seibold left Camulos to start a new hedge fund, sales people whose job it is to facilitate trades between counterparties, and who are paid based on their success, contacted Seibold to try to get his business. The evidence reveals that that in fact happened, and that consists with what one would expect in the money management industry, where players actively look for new sources of deal flow.[144] Camulos cannot claim a breach of the Confidentiality Agreement for Seibold's continuation of professional relationships that may have originated during his time at Camulos. Thus, I find that Camulos has not proved that Seibold used the Counterparty Contacts.

d. Marketing Presentations

Camulos contends that Seibold breached the Confidentiality Agreement in two ways relating to its Marketing Presentations. These Marketing Presentations consist of a March 2006 presentation,[145] 17 slides discussing "Event Driven Investing,"[146] 9 draft presentations that were created before Camulos launched,[147] and various other documents, recovered from Seibold's computer by Camulos' forensic expert, that

[143] *See* Tr. 422-23 (Seibold – Cross) ("[T]he only way that a salesman gets more clients is by people moving from firm to firm and them acquiring a contact – that person at a new firm. Generally, and I would say probably in all these cases, the salesman called me to say, 'Hey, I hear you're going to be opening up shop. I'd love to cover you.'"); *id*. at 425:7-8 ("[I]n most cases these people reach out to me. They called me.").
[144] *See, e.g.*, JX 230 (email from Seibold to Christine McCann at Goldman Sachs (Aug. 10, 2007)); JX 231 (email from Russel Miron at Bear Stearns to Seibold (Aug. 07, 2007)).
[145] JX 46; JX 196.
[146] JX 196.
[147] JX 114-22.

Camulos lists only by their file names.[148] First, Camulos takes issue with Seibold's copying and pasting of certain slides in those Marketing Presentations into draft Noroton marketing materials. Second, it takes issue with Seibold's mention of transactions that he was a part of at Camulos that also appear as case studies in the Marketing Presentations in his own Noroton marketing materials.

Here, unlike some of the earlier information categories, the question of use is not fairly in dispute. Seibold plainly used certain Camulos slides as templates to aid the process of drafting the Noroton pitch book, as revealed by both the documentary evidence and by Seibold's testimony at trial. For instance, the draft Noroton pitch book, dated May 24, 2007, included a nearly identical copy of Camulos' "Executive Summary" slide, its "Event Driven Investing" slides, its "Credit Analysis Process" slides, and finally a similar version of Camulos' "Why invest with Camulos Capital" slide.[149] The draft Noroton pitch book, dated June 6, 2007 also contained Camulos' "Risk Management Strategies" slide. Seibold and Ekern proceeded to "noodle," or edit, the text in those slides over the next several weeks.[150] Similarly, Seibold sent Ekern a slide with Camulos Capital's organization chart, which Ekern then "synthesized" with other presentations sent to him by Richard Johnson to prepare Noroton's organization chart.[151] The evidence thus establishes that Seibold used these slides as a template for the Noroton pitch book.

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[148] JX 413 (Alix Partners forensic analysis report (Apr. 3, 2012)).
[149] *See* Tr. 301:8-321:6 (Seibold – Cross); JX 196 (Camulos "Event Driven Investing" slides); JX 197 (email from Seibold to Ekern (May 24, 2007)) (writing to Ekern that "[w]e should noodle this" in response to Ekern's request for the draft Noroton pitch book).
[150] JX 197; *see also* Tr. 299:12-21 (Seibold – Cross).
[151] JX 198 (email from Ekern to Seibold (June 6, 2007)).

But Camulos' breach of contract claim premised on Seibold's use of the Marketing Presentations fails because the slides that he used and the information contained on those slides were not Confidential Information for purposes of the Confidentiality Agreement. The specific text that Seibold initially copied contained basic statements about the nature of distressed debt investing and the investment process. For one illustrative example, Seibold copied a series of bullet points that said: "Events create opportunities" through "defaults," "bankruptcies," "refinancings," and "earnings disruption," and another series that said "Events create exits" through "bankruptcy," "new capital arrang[ements]," and "restructurings announced."[152] For a second example, Seibold copied the bullet point that listed as a risk management strategy "[a]ccess to sufficient capital to take advantage of market disturbances."[153] Mundane, trite, almost sleep-inducing statements such as these do not reflect "nonpublic information" about Camulos or its portfolio companies that is "confidential, proprietary or sensitive,"[154] nor do they reflect any sort of "nonpublic" investing strategy that distinguishes Camulos from its competitors,[155] and Brennan conceded as much in his deposition and at trial.[156]

Rather, Camulos argues that the specific expression of these concepts embodied in the Marketing Presentations constitutes Camulos' "intellectual property" through

[152] *Compare* JX 196 (Camulos "Event Driven Investing" slides), *with* JX 197 (Seibold "Blind Squirrel Partners" slides).
[153] JX 197.
[154] CA ¶¶ 4, 5.
[155] *Id.* ¶ 4(v) (covering "any other non-public information concerning Camulos, its management, employees, or business operations").
[156] Tr. 122:4-125:16 (Brennan – Cross); Brennan Dep. Tr. 279:9-284:13.

copyright law and thus qualifies as Confidential Information.[157] The problem with this argument is that copyright protection only applies to "original works of authorship"[158] that must display some "some minimal degree of creativity."[159] Copyright law also excludes from its ambit "short phrases,"[160] a term that appears to include phrases that Seibold used, such as "Events create exits," and also excludes "blank forms … designed for recording information,"[161] which appears to encompass templates for an organization chart.

On the whole, I find that Camulos has failed to satisfy its burden of proof to establish that the copied selections of its Marketing Presentations constitute Camulos' intellectual property. I confess that I am no expert in federal copyright law, but Camulos has not helped its cause by treating this intellectual property argument in a throw-away fashion without citing to any relevant copyright statutory or decisional law, or copyright treatises to support its claim.[162] The rote PowerPoint blather regurgitated in these slides is ubiquitous, and seems the very opposite of creative and intellectual. If one allowed it to be copyrighted, thousands of financial industry players who "impact" audiences with dozens of uses of the phrase "at the end of the day" in "perfect storms"[163] of financial banality would all be constant infringers. I thus cannot credit this argument.

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[157] CA ¶ 4(ii) (listing "any intellectual property" as an example of Confidential Information).
[158] 17 U.S.C. § 102.
[159] *Feist Publ'ns, Inc. v. Rural Tel. Serv. Co.*, 499 U.S. 340, 345 (1991).
[160] 37 C.F.R. § 202.01(a).
[161] *Id*. § 202.01(i).
[162] For treatises, see, for example, Paul Goldstein, *Goldstein on Copyright* (3d ed. 2005); and Melville B. Nimmer & David Nimmer, *Nimmer on Copyright* (rev. ed. 2012).
[163] To identify some favorite usages of money managers and investment bankers in audience presentations.

For similar reasons, Camulos' claim that Seibold breached the Confidentiality Agreement by referring in the Noroton pitch book to specific transactions that he worked on while at Camulos fails. These transactions and Camulos' involvement in them were made public by press releases and other news articles, and thus could not be said to be Confidential Information.[164]

Camulos conceded at trial that Seibold did not use or disclose in the Noroton pitch books Seibold's track record (or financial performance) at Camulos, which those in the industry do recognize as confidential because it implicates the financial performance of the fund itself.[165] Thus, nothing that Seibold used or disclosed from these case studies qualifies as Confidential Information, because it was "no longer entitled to confidentiality"[166] and had become "lawfully and appropriately available"[167] once it became public knowledge.

e. Credit Trading Reports And Investment Ideas

Camulos claims that Seibold used Camulos' Credit Trading Reports, which reveal Camulos' investments, and other "Investment Ideas." I reject this claim. Although both the Credit Trading Reports and Investment Ideas constitute Confidential Information, Camulos has not convinced me that Seibold used the information contained in those documents when deciding what investments to make while at Noroton. The information contained in those Credit Trading Reports and Investment Ideas would have been stale by

[164] *See* Tr. 39:1-23 (Brennan).
[165] *Id*. 116:16-21 (Brennan – Cross).
[166] CA ¶ 7(a).
[167] *Id*.

the time that Noroton was up and running. Specifically, the Credit Trading Reports reflect Camulos' investment positions as of May 2007 at the latest, and Noroton did not start trading until July 2008. I find it improbable that Seibold would have made his investment decisions in July 2008 and later based on information about Camulos' trades over a year earlier, especially when the markets were changing in a fundamental way over that time frame, and particularly as to opportunities for distressed debt investing. No evidence suggesting such an unlikely thing occurred was presented.

f. Infrastructure Documents

Finally, Camulos argues that Seibold breached the Confidentiality Agreement by forwarding (and thus disclosing) certain "Infrastructure Documents" to Ekern, who, Camulos contends, used those documents to help set up Noroton. These documents consist of Camulos' structure chart,[168] the private placement memorandum, the Subscriber Information Form, the Subscription Agreement, Camulos' ERISA questionnaire, a subscription agreement providing for investment in Camulos' off-shore investment vehicle by non-U.S. citizens,[169] the Partnership term sheet,[170] and the supplement to the term sheet.[171] The evidence is clear that Seibold emailed Ekern these documents upon Ekern's request.[172] These Infrastructure Documents constitute Confidential Information because they qualify as "confidential contractual information"

[168] JX 57.
[169] JX 99.
[170] JX 136.
[171] JX 137.
[172] *E.g.*, JX 136 (email from Seibold to Ekern (Mar. 23, 2007)) (enclosing partnership term sheet, and asking, "What else do you need?").

and "confidential business records" such as "manuals and forms."[173] In this way, Seibold breached the Confidentiality Agreement by improperly disclosing to Ekern Confidential Information in violation of that Agreement's terms.

But, Camulos has not proven that Seibold or Ekern ended up using these Infrastructure Documents to prepare or create equivalent forms for Noroton. Seibold hired his own legal advisors at substantial expense to draft Noroton's organizational documents from scratch, and the evidence shows that Noroton used the documents created by that law firm rather than those taken from Camulos.[174] Thus, I find that Seibold did not use the Infrastructure Documents, and therefore did not breach the Confidentiality Agreement.

* * *

In sum, I find that Seibold breached the Confidentiality Agreement only in the following ways:

- By failing to return to Camulos Capital upon his departure: (1) Investor Lists; (2) any contact within the Distressed Debt Contacts that he was not entitled to keep because it did not fairly belong to him; (3) the Counterparty Contacts; (4) any slides of the Marketing Presentations that contained information related to Camulos' financial performance; (5) the Credit Trading Reports and Investment Ideas; and (6) the Infrastructure Documents; and,

- By disclosing certain confidential information in the Infrastructure Documents to Ekern.

[173] CA ¶ 4.
[174] Post-Tr. 113:7-12; JX 240 (email from Ekern to Johnson (Aug. 27, 2007)); JX 241A (Draft Noroton LLC agreement (May 9, 2007)); JX 249A, B, C (draft Noroton LLC agreements, Sept. 18-20, 2007)); JX 273 (letters from Seward & Kissel, LLP, to Ekern (Nov. 2007-Oct. 2008)) (requesting payment for creating documents).

As a remedy for this breach of the Confidentiality Agreement, Camulos seeks an injunction requiring Seibold (and Noroton) to return any Confidential Information still in his possession based on the "irreparable harm" provision in that Agreement, and seeks attorney's fees under a fee shifting provision in a separate contract between Seibold and the Fund. To what extent Camulos is entitled to these remedies is a question that I will address later.

b. Did Seibold Breach The Limited Partnership Agreement?

As a sort of "Oh, by the way," Camulos asserted a claim that Seibold breached not only the Confidentiality Agreement he signed as an employee of Camulos Capital, but also the confidentiality clause in the Limited Partnership Agreement he signed as a limited partner of the Fund. Counsel for Camulos did not ask witnesses any questions about the confidentiality clause in the Limited Partnership Agreement at trial,[175] and spent very few words in briefing trying to support this claim.[176] In post-trial argument, Camulos passed over it altogether.[177] The lack of effort shows.

The confidentiality clause in the Limited Partnership Agreement requires each limited partner to

> keep confidential, and not to make any use of (other than for purposes reasonably related to its [i]nterest or for purposes of filing such Limited

[175] The only mention of the confidentiality clause of the Limited Partnership Agreement was elicited on cross-examination by Seibold's counsel. Tr. 90:10-18 (Brennan – Cross).
[176] Camulos spent half a page on this argument in its pre-trial briefing, and two and a half pages in its post-trial briefing. Defs. Pre-Tr. Op. Br. at 17; Defs. Post-Tr. Op. Br. at 19-21.
[177] The parties discussed the Confidentiality Agreement at length in the post-trial argument. When counsel for Camulos discussed the Limited Partnership Agreement, he did not so much as mention that it contained a confidentiality clause. *E.g.*, Post-Tr. 55:20-56:24 (contrasting the Limited Partnership Agreement with the Confidentiality Agreement).

> Partner's tax returns) or to disclose to any [p]erson, any information or matter relating to the Partnership and its affairs and any information related to any [i]nvestment … provided that (i) such Limited Partner … may make such disclosure to the extent that … the information to be disclosed is publicly known at the time of proposed disclosure, or the information otherwise is or becomes legally known to such Limited Partner other than through disclosure by the Partnership or the General Partner.[178]

In the above discussion, I found that the only documents of any kind related to Camulos that Seibold did not "keep confidential," "used," or "disclosed" were the Infrastructure Documents and certain parts of the Marketing Presentations. The question is therefore whether any of these documents are protected by the confidentiality clause of the Limited Partnership Agreement. The confidentiality clause does not protect information that was made known to Seibold "other than through disclosure by the Partnership or the General Partner."[179] Therefore, information that was disclosed to Seibold by Camulos Capital is not covered by the Limited Partnership Agreement. Camulos bears the burden of proof of showing that Seibold received the documents that he "used" or "disclosed" in his capacity as a limited partner, and that he did not receive them as an employee of Camulos Capital.

First, the Marketing Presentations. Camulos has not sustained its burden as to these documents, because the only evidence concerning the source of the Marketing Presentations indicates that Seibold received them *as an employee of Camulos Capital*.[180] This would make sense, given that the Marketing Presentations were prepared by

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[178] LPA § 7.5.
[179] *Id.*
[180] JX 46 (email from William Young at Camulos Capital to Seibold (Feb. 27, 2006)) (containing marketing presentation).

Camulos Capital, and that they advertise the achievements of Camulos Capital employees.

Camulos, recognizing this problem, argues that the General Partner "delegated" to Camulos Capital the authority to issue the Marketing Presentations to Seibold, and therefore Seibold did in fact receive them in his capacity as a limited partner.[181] Camulos claims in its post-trial briefing that this delegation of authority is in accordance with the terms of the Investment Management Agreement, which appoints Camulos Capital as "investment advisor and trading manager with respect to the assets and liabilities of the Partnership."[182] But, there is no evidence of any such delegation, and such a delegation would be beyond the scope of the powers accorded to the Investment Manager under the Investment Management Agreement.[183] I therefore reject this argument.

On the question of the Infrastructure Documents, Camulos' argument is somewhat less strained. The evidence shows that Seibold "disclosed" the Infrastructure Documents to Ekern.[184] Some of the Infrastructure Documents were routinely provided to partners.[185] And, as Camulos points out, Seibold himself testified at trial that he received

[181] Defs. Post-Tr. Op. Br. at 20.
[182] IMA ¶ 1(a).
[183] *Id*.
[184] JX 99 (email from Seibold to Ekern (Jan. 7, 2007)); JX 136 (email from Seibold to Ekern (Mar. 23, 2007)); JX 137 (email from Seibold to Ekern (Mar. 23, 2007)).
[185] Potential investors had to sign the Subscription Agreement and complete the Subscriber Information Form in order to become partners, and the Subscription Agreement provides that a partner will receive the private placement memorandum and the Limited Partnership Agreement. SA ¶ 1(a).

many of the Infrastructure Documents as a partner, and kept them because he believed he was entitled to have them as a partner.[186]

But, Camulos has still not sustained its burden of proof, for an unusual reason. Camulos bases its claim on Seibold's own self-serving testimony that he received most of the Infrastructure Documents in his capacity as a limited partner. When Seibold gave his testimony, he was ducking and dancing on the stand, trying to avoid the reality that he had downloaded huge gobs of Camulos Capital information and forwarded them to his home email account to help Ekern and himself form a new fund.[187] In the moment, Seibold somehow felt that claiming he had access to a lot of these documents as a limited partner was helpful to him, likely because the Fund had dozens of limited partners and thus Seibold could claim that there was nothing sensitive about the information.[188] At trial, Camulos did very little to show what Infrastructure Documents were actually provided to limited partners, much less that the information was truly sensitive other than because the Fund told limited partners that virtually anything they received was to be treated as a state secret.[189]

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[186] Tr. 220:12-16 (Seibold) (stating that he retained "the PPM and subscription documents, things of that nature" as an "investor" in the Fund); *id*. 225:4-9 (Seibold) (retaining the "term sheet, term sheet supplement" as an investor); *id*. 531:9-10 (retaining the "structure chart").

[187] Tr. 219:3-220:7 (Seibold) (describing how he received the letter from Camulos' attorneys in August 2007 reminding him of the Camulos Capital Confidentiality Agreement, and how he then turned over information to his attorney); *id*. 222:11-213:4 (Seibold) (describing Seibold's signing of the Camulos Capital Confidentiality Agreement); *id*. 527:21-529:10 (Seibold – Cross) (discussing Seibold's response to Holahan's letter of October 21, 2007, in which Holahan reminded him of the Camulos Capital Confidentiality Agreement).

[188] *See* JX 447, 449 (list of Camulos investors).

[189] Brennan testified that the limited partners received only "about five documents" as investors, some of which concerned the past performance of the Fund and could not be classed as Infrastructure Documents at all. Tr. 90:12-18 (Brennan). Brennan testified that far fewer of the

For present purposes, what is most important is that I believe Camulos' basic case, which is that Seibold breached the Confidentiality Agreement and his fiduciary duties to Camulos Capital by improperly gathering and using Camulos Capital information for his own purposes. As a factual matter, Seibold got access to the Infrastructure Documents in the course of his work at Camulos Capital, and that is what he forwarded to Ekern. There is no showing that Seibold ever referred to the copies of the documents sent him as a limited partner, much less that these were in a computer form. Rather, the evidence is that Seibold gathered files from the Camulos Capital system and sent them home for use by himself and Ekern.[190] Although it is fair for Camulos to seek to stick Seibold with his own words, I do not believe Seibold's testimony, but rather Camulos' proof. Finding no basis to conclude that Seibold misused information he received as a limited partner, I find against Camulos on its claim for breach of the confidentiality clause in the Limited Partnership Agreement.

As important, for reasons previously stated, even if Seibold misused such documents, Camulos has failed to prove any resulting damages. This is even more true as to the Limited Partnership Agreement than as to the Confidentiality Agreement because Camulos spent no time showing how the disclosure of any document it had sent

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Infrastructure Documents were protected by the confidentiality clause of the Limited Partnership Agreement than Seibold did. Therefore, if Camulos were to place weight on its own witness's testimony, rather than Seibold's, its argument about the Infrastructure Documents would be even weaker. Brennan also testified that the documents that limited partners received were "confidential," but admitted that they were hardly sensitive. *Id.*

[190] *See id.*; SA ¶ 1(a) (limited partners must acknowledge that they have been sent the private placement memorandum and the Limited Partnership Agreement as part of investing in the Fund, but not other documents).

to its limited partners was misused by Seibold or, if it was, how it could have, much less did, cause Camulos harm.[191]

2. Camulos' Claims Against Seibold For Breach Of Fiduciary Duty

Camulos asserts claims for breaches of fiduciary duty against Seibold "as a Camulos partner and senior investment professional."[192] Seibold does not dispute that he owed fiduciary duties to Camulos Capital in those capacities, which are essentially co-extensive.[193] Camulos alleges that Seibold breached these fiduciary duties by: (1) misusing Camulos' confidential information; (2) soliciting investors while purporting to work on Camulos business; and (3) not working in Camulos' interests while being paid by Camulos.[194]

a. Misuse Of Confidential Information

It is settled that an agent may not misuse the confidential information of its principal.[195] Here, however, Camulos' claim that Seibold breached his fiduciary duty by misusing confidential information alleges facts identical to Camulos' claim that Seibold

[191] Seibold had attorneys prepare infrastructure documents for him. *See* JX 273 (letters from Seward & Kissel, LLP, to Ekern (Nov. 2007-Oct. 2008)).
[192] Defs. Post-Tr. Op. Br. at 4.
[193] "An agent has a fiduciary duty to act loyally for the principal's benefit in all matters connected with the agency relationship." Restatement (Third) of Agency § 8.01; *see* 19 Williston on Contracts § 54:28 (4th ed.) (noting that partners owe a fiduciary duty to the partnership that is "analogous" to that owed by agents). The parties have briefed the fiduciary duty claims as if Delaware law applies. They do not ask me to determine whether another state's laws apply to govern the fiduciary relationship Seibold owes as an employee to Camulos Capital, and thus I do not reach that question.
[194] Defs. Post-Tr. Op. Br. at 1-16.
[195] *Brophy v. Cities Serv. Co.*, 70 A.2d 5, 7 (Del. Ch. 1949) ("[I]f an employee in the course of his employment acquires secret information relating to his employer's business, he occupies a position of trust and confidence toward it, analogous in most respects to that of a fiduciary, and must govern his actions accordingly.").

breached his contractual duties by misusing Confidential Information, and is thus "foreclosed as superfluous."[196]

b. Solicitation Of Investors While On Camulos Business

Camulos' next claim is that Seibold solicited investors for his new Noroton fund while on working on Camulos business. As Camulos notes, an employee commits a breach of fiduciary duty when he "solicit[s an] employer's customers before cessation of employment."[197] Seibold met with a representative of Macquarie and friend, Andrew Hunter, during a business trip to London, paid for by Camulos, and he took Hunter to dinner at Camulos' expense.[198] At this dinner, Seibold discussed with Hunter his idea to set up a new hedge fund, and inquired whether Macquarie might be interested in investing in it.[199] But, Macquarie was not a current Camulos investor,[200] so it cannot be said that Seibold was soliciting a Camulos customer. Nor was Macquarie a prospective Camulos customer: as Hunter later told Seibold, Macquarie did not invest in third-party managed funds.[201] Therefore, Camulos has not managed to show that Seibold solicited Camulos' customers.

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[196] *Nemec v. Shrader*, 991 A.2d 1120, 1129 (Del. 2010) ("[W]here a dispute arises from obligations that are expressly addressed by contract, that dispute will be treated as a breach of contract claim. In that specific context, any fiduciary claims arising out of the same facts that underlie the contract obligations would be foreclosed as superfluous.").
[197] *Beard Research, Inc. v. Kates*, 8 A.3d 573, 603 (Del. Ch. 2010).
[198] JX 88 (email from Seibold to Hunter (Jan. 2, 2007)); JX 101 (receipt for "Dinner with Macquarie" (Jan. 11, 2007)); JX 113 (American Express transactions, January 2007 (Jan. 22, 2007)); JX 301A (Camulos Capital expense report (Jan. 2007)).
[199] JX 156 (email from Hunter to Seibold (Mar. 28, 2007)); Tr. 443:18-446:16 (Seibold).
[200] Tr. 108:21-109:18 (Brennan – Cross).
[201] JX 156.

c. Failure To Work In Camulos' Interests

Camulos' final claim is that Seibold spent time preparing to launch Noroton while he was still a Camulos employee, and used Camulos' resources to plan the creation of Noroton when he should have been working for Camulos. It is a breach of fiduciary duty for an agent to use his principal's resources to compete, or prepare to compete, with the principal.[202] An agent may, however, take steps to prepare to compete with his principal, so long as these steps are "not otherwise wrongful."[203]

Camulos alleges that Seibold wrongfully prepared to compete with Camulos by spending "months" at Camulos obtaining resources useful to his work at Noroton.[204] But downloading information over a course of months does not equate to spending months downloading. Insofar as Camulos alleges that Seibold wasted time that he owed to Camulos, it has not proven that Seibold spent anything but a trivial amount of work time on planning to compete with Camulos, and certainly not enough time to rise to a claim of a breach of fiduciary duty.

Where Camulos prevails on its claim, however, is in its argument that Seibold "wrongful[ly]" prepared to compete[205] by downloading en masse Camulos Capital's work

[202] See *Triton Constr. Co. v. E. Shore Elec. Servs., Inc.*, 2009 WL 1387115, at *16 (Del. Ch. May 18, 2009).
[203] Restatement (Third) Of Agency § 8.04.
[204] Defs. Post-Tr. Op. Br. at 12.
[205] *See* Restatement (Third) Of Agency § 8.04 ("Throughout the duration of an agency relationship, an agent has a duty to refrain from competing with the principal and from taking action on behalf of or otherwise assisting the principal's competitors. During that time, an agent may take action, not otherwise wrongful, to prepare for competition following termination of the agency relationship."); *see also Beard Research Inc. v. Kates*, 8 A.3d 573, 601 (Del. Ch. 2010) ("[The fiduciary duties of an agent] encompass the corollary duties of an agent to disclose information that is relevant to the affairs of the agency entrusted to him and to refrain from

product in order to assemble a resource bank of useful tools and templates with which to use for purposes of competing with it. In that regard, an agent has a duty not to "use the property of a principal for the agent's own purposes," unless the principal consents to such use.[206] There is no confidentiality requirement to this proscription. Thus, I find that Seibold breached his fiduciary duty to Camulos Capital by taking its work product for his own purposes.[207]

Of course, this breach of fiduciary duty covers behavior identical to Seibold's breach of the Confidentiality Agreement, which I have already dealt with. Furthermore, Camulos Capital has not suffered any harm as a result of the breach of fiduciary duty. What kind of remedy Camulos Capital can obtain for the breach is therefore a separate and important question, which I shall address later in this opinion.

3. Camulos' Tort-Based Claims Against Noroton

Camulos also seeks to hold Noroton liable for Seibold's breaches under various tort theories. Specifically, it asserts claims for tortious interference with contract, aiding and abetting breach of fiduciary duty, and conversion. I find Noroton liable on all three theories.

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placing himself in a position antagonistic to his principal concerning the subject matter of his agency").

[206] Restatement (Third) Of Agency § 8.04.

[207] A word of caution here. I recognize that the principle set forth above is not one that most of us can claim that we have adhered to with fidelity 100% of the time in our working lives. Section 8.05 of the Restatement (Third) of Agency should not be read in a nonsensical, Stalinist way that allows employers an easy excuse to sue or penalize faithful employees for human behavior that does not diminish the effectiveness of the employer in any way. Phones get used for personal phone calls, work copiers get used to make a few copies of necessary personal documents, computers get used to plan vacations, etc., because employees have lives and families. But so too do employees' own computers, paper, and resources get used for work benefiting their employers.

As to tortious interference with contract, Noroton is liable because it intentionally and without justification interfered with the Confidentiality Agreement, and this interference was a significant factor in Seibold's breach of the Agreement.[208] But, as it did against Seibold, Camulos has dropped any claim against Noroton for monetary relief.

As to aiding and abetting breach of fiduciary duty, Noroton is liable because the Seibold's knowledge is imputed to Noroton's for purposes of the "knowing participation" requirement of that claim.[209] Because Noroton benefitted from Seibold's breach of his duty, and Seibold breached his duty to Camulos Capital for the purpose of benefiting Noroton, I dismiss the objection that such an aiding and abetting claim cannot lie because Seibold had not fully brought Noroton into existence at the time that the duty was breached for its benefit.[210]

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[208] *See Beard Research*, 8 A.3d at 605 (listing the elements of a tortious interference claim).

[209] *Triton Constr. Co. v. E. Shore Elec. Servs., Inc.*, 2009 WL 1387115, at *16 (Del. Ch. May 18, 2009).

[210] The Noroton Entities would unquestionably be liable if they were in existence at the time that Seibold took the documents. Because they have benefitted exactly as if they had been in existence at that time, they should be liable in the same way. It is well-established that, if a later-formed legal entity accepts benefits from earlier offenses, it may be liable for those offenses. *See, e.g., Nanodetex Corp. v. Defiant Techs.*, 349 Fed. App'x 312, 322 (10th Cir. 2009) ("[C]orporations are usually prevented from retaining the benefits of wrongful conduct [of promoters] while escaping liability for it."); *In re Rickel & Assocs., Inc.*, 272 B.R. 74, 95 (S.D.N.Y. 2002) ("The unauthorized fraudulent acts of an agent will be imputed to the principal if the principal ratifies the fraud by accepting the benefit of those acts. … The same rule applies where the agent commits the fraud prior to the time that the principal comes into legal existence.").

Noroton is liable for conversion of Camulos work product and Confidential Information taken by Seibold, because it wrongly "exercise[d] dominion" over that property, in a manner that was inconsistent with Camulos' rights over the property.[211]

Finally, Camulos also seeks a remedy under the theory of unjust enrichment. As I observed earlier, unjust enrichment operates only in the "absence of a remedy provided by law."[212] Because Camulos has sought, and obtained, a legal remedy against Noroton, by prevailing on its tort claims, it cannot (and has no need to) seek a remedy for unjust enrichment.

But, Camulos has failed to prove any material harm resulting from any of the wrongs for which Seibold is liable, and I deal with the question of its remedy later.

4. Camulos' Spoliation Claims

Perhaps realizing that its voluminous evidence cannot, on its own, support a claim that Seibold has violated the confidentiality agreement in a materially damaging way, Camulos seeks to bolster its claims by alleging that Seibold has despoiled evidence. Camulos first asks me to find that Seibold destroyed evidence that he knew would be relevant at trial in this case, and which he therefore had a duty to keep. Camulos then seeks me to draw an adverse inference against Seibold regarding what the evidence

[211] Conversion is the "the wrongful exercise of dominion over the property of another, in denial of that person's right, or inconsistent with it." *Kuroda v. SPJS Hldgs., L.L.C.*, 971 A.2d 872, 890 (Del. Ch. 2009).
[212] *Nemec v. Shrader*, 991 A.2d 1120, 1130 (Del. 2010).

would have shown.[213] Thus, Camulos hopes that I will fill in for it any "gaps in evidence on [its] claims and defenses."[214]

Spoliation of evidence is a serious charge, and a finding of spoliation can lead to sanctions as harsh as a default judgment.[215] "A party in litigation or who has reason to anticipate litigation has an affirmative duty to preserve evidence that might be relevant to the issues in the lawsuit."[216] But, drawing an adverse inference is only appropriate where a party acts to "intentionally or recklessly destroy evidence" and when "it knows that the *item in question* is relevant to a legal dispute or it was otherwise under a legal duty to preserve the item."[217] A party is not obligated to "preserve every shred of paper, every e-mail or electronic document, but instead must preserve what it knows, or reasonably should know, is relevant to the action, is reasonably calculated to lead to the discovery of admissible evidence, is reasonably likely to be requested during discovery and/or is the subject of a pending discovery request."[218] The party seeking to prove spoliation, for its part, must identify specific documents that existed and would support its position; it cannot make a vague and general complaint that evidence has been destroyed.[219]

Camulos claims that Seibold deleted thousands of documents on his Camulos laptop at a time when he had reason to expect litigation, and that, as a result, 117

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[213] Defs. Post-Tr. Op. Br. at 42-49; Defs. Post-Tr. Reply Br. at 26-30.
[214] Defs. Post-Tr. Op. Br. at 42.
[215] *Sundor Elec., Inc. v. E.J.T. Constr. Co.*, 337 A.2d 651, 652 (Del. 1975).
[216] *Beard Research, Inc., v. Kates*, 981 A.2d 1175, 1185 (Del. Ch. 2009).
[217] *Sears, Roebuck & Co. v. Midcap*, 893 A.2d 542, 552 (Del. 2006) (emphasis added).
[218] *TR Investors, LLC v. Genger*, 2009 WL 4696062, at *17 (Del. Ch. Dec. 9, 2009), *aff'd*, 26 A.3d 180 (Del. 2011) (citation omitted).
[219] *Id*. at *18.

document files and 4 .pst files have been irretrievably deleted.[220] The evidence from Seibold shows, however, that only 13 documents and the 4 .pst files were actually lost, and even some of these have been recovered forensically.[221] In the circumstances of this case, it seems as if Seibold and his counsel have made a good faith, if imperfect, effort to preserve evidence, and there is no evidence of intentional or reckless spoliation.

Seibold informed Camulos that he would be deleting files from his computer systems to comply with the terms of the Confidentiality Agreement. At all relevant points, he appears to have been taking directions from counsel. In August 2007, Seibold placed items of Camulos' information on an external hard drive, which he then gave to his lawyer, before deleting them from his hard drive. Seibold's counsel informed Camulos of this.[222] Seibold wiped clean his Camulos laptop in 2011, but only after taking an image of the hard drive, which was provided to Camulos.[223] Once again, Camulos was informed of this by Seibold's counsel.[224] Vast amounts of Camulos documents were turned over by Seibold in discovery, illustrating his possession of Camulos information after he left its employment. The age of computers has led to far too light uses of the harsh term "despoiler," and courts should be mindful not to tag

[220] Defs. Post-Tr. Op. Br. at 47. A .pst file is a "container-like" file used in Outlook to aggregate individual emails. JX 417 (UHY forensic rebuttal report (Apr. 14, 2012)).
[221] JX 417, Exx. G, H.
[222] *See* JX 234 (letter from Steven Frederick to Jonathan Sulds (Aug. 17, 2007)).
[223] JX 413 (Alix Partners forensic analysis report (Apr. 3, 2012)); JX 404 (laptop cleansing report (Jan. 13, 2012)).
[224] *See* JX 540 (email from Barr Flinn to Daniel Goldberg concerning deletion of documents (May 17, 2011)).

anyone who alters, deletes, or loses a computer file within five years of a law suit. Our Supreme Court's careful decision in *Sears* is mindful of that danger.[225]

In this case, Seibold had a legitimate reason to delete evidence from his computer: it was Camulos' property, and Camulos did not want him to have further access to it. Seibold and his attorney struck a sensible balance between ensuring the confidentiality of Camulos' information and preserving the evidence for use at trial. In these circumstances, Camulos has not convinced me that Seibold acted recklessly, or even negligently, to despoil evidence. I thus reject Camulos' theory and decline to draw an adverse inference from the deleted evidence. And, because I do not hold that Seibold despoiled evidence, I do not take Camulos' spoliation claims into account when I determine the rate of interest that Seibold is entitled to on his recovery, which I address in the next section.

IV. Remedies

Having resolved the substantive claims, I now turn to what remedies, if any, each party is owed.

A. Seibold Gets His Money Back, Plus Simple Prejudgment Interest

First things first. Seibold is entitled to the Withdrawal Proceeds, which have been improperly withheld from him from the time the Limited Partnership Agreement was breached.[226] Seibold is also entitled to prejudgment interest.[227] The parties have

[225] *Sears, Roebuck & Co. v. Midcap*, 893 A.2d 542, 548-50 (Del. 2006).
[226] Camulos argues in its post-trial briefing that, if Seibold had received the Withdrawal Proceeds in 2007, he would have been obliged to invest them in Noroton, and so would have lost them. Defs. Post-Tr. Op. Br. at 35. Because Camulos did not raise this argument before or even at trial,

stipulated that, in the absence of any dispute, Seibold would have been entitled to 90% of his money on February 14, 2008, and the remaining 10% on April 14, 2010,[228] and so interest accrues as of those dates.

Seibold seeks the "default" legal rate of interest,[229] and calculates this as 8.5%.[230] He arrives at this figure by taking the Federal Reserve discount rate at the time when his contribution was withheld, on February 14, 2008, 3.5%, and adding to it 5%, as mandated by statute. Seibold wants to use this fixed rate, which is favorable to him, rather than take into account evolving interest rate conditions. In addition, he requests that it be compounded.[231]

But, "a court of equity has broad discretion, subject to principles of fairness, in fixing the [prejudgment interest] rate to be applied."[232] Although Camulos should not have engaged in self-help, by applying its own set-off,[233] Seibold is not an innocent, and

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and Seibold has not had a fair opportunity to rebut it, I do not consider it now. *See PharmAthene, Inc. v. SIGA Techs., Inc.*, 2011 WL 6392906, at *2 (Del. Ch. Dec. 16, 2011) ("[T]o defend a claim or oppose a defense, the adverse party deserves sufficient notice of the claim or defense in the first instance.").

[227] *See Chrysler Corp. (Del.) v. Chaplake Hldgs.*, 822 A.2d 1024, 1037 (Del. 2003) (citing cases).

[228] P. Post-Tr. Reply Br. at 10 n.6; Defs. Post-Tr. Op. Br. at 39-40.

[229] *Beard Research, Inc. v. Kates*, 8 A.3d 573, 620 (Del. Ch. 2010); *see* 6 *Del. C.* § 2301(a).

[230] P. Post-Tr. Op. Br. at 15 n.7.

[231] *Id*.

[232] *Summa Corp. v. Trans World Airlines, Inc.*, 540 A.2d 403, 409 (Del. 1987).

[233] Set-offs, of course, are properly taken only as to judgments, not claims. A pre-existing judgment may be offset against a new judgment to reduce the amount that a party is to pay. *See, e.g., In re Whimsy*, 221 B.R. 69 (S.D.N.Y. 1998). Alternatively, a court may grant set-off to reduce an award of monetary damages to a plaintiff, where the sums to be offset can be ascertained from the record or are apparent from the plaintiff's allegations. *See Quillen v. Sayers*, 482 A.2d 744, 748 (Del. 1984); *Layfield v. Wieland*, 1998 WL 326487, at *2 (Del. Ch. May 20, 1998). But, a set-off cannot be taken preemptively against *claims*, and instead must be formally

his fiduciary and contractual misconduct makes him unfit to call on an equity court's authority to be generous in setting an interest rate when fairness counsels that action.

My semi-rural, Hockessin, Delaware, cowboy math reveals the following. Interest rates have been at historic lows for several years.[234] An award of 8.5% interest, whether simple or compound, would be a windfall. As against this, Seibold argues that the rate of return in equity markets is as applicable as interest rates in determining a fair interest rate.[235] But although it is true that equity returns can be relevant in arriving at a fair interest rate,[236] equity returns over the period in question have been closer to 0.85% than

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asserted as a reduction against a "liquidated and demandable" debt. 80 C.J.S., *Set-Off and Counterclaim* § 3 (updated 2012).

[234] Although the discount rate was 3.5% in February 2008, it fell by the end of the year to 0.5%. In February 2010, it was increased to 0.75%, where it has remained since. Federal Reserve Bank of New York, *Historical Changes of the Target Federal Funds and Discount Rates*, http://www.newyorkfed.org/markets/statistics/dlyrates/fedrate.html. The federal funds rate, a target measure of how much banks charge to lend to each other, has been between 0.25% and zero since the end of 2008. *Id*. Since the beginning of 2008, U.S. Treasury yields have fallen steadily, albeit inconsistently, such that, on August 31, 2012, 1-year T-bills were yielding 0.16% and 5-year notes were yielding 0.59%. U.S. Dep't of Treasury, *Daily Yield Curve Rates*, http://www.treasury.gov/resource-center/data-chart-center/interest-rates/Pages/TextView.aspx?data=yield.

[235] P. Post-Tr. Op. Br. at 11.

[236] *In re PNB Hldg. Co. S'holders Litig.*, 2006 WL 2403999, at *33 (Del. Ch. Aug. 18, 2006).

8.5%.[237] Seibold should be careful what he wishes for before he seeks an equity component in the determination of prejudgment interest.[238]

The average Federal Reserve discount rate between February 14, 2008, and August 31, 2012 has been 0.96%, and between April 14, 2008, and August 8, 2012, the average Federal Reserve discount rate has been 0.88%.[239] The equitable approach in the circumstances, taking into account these economic realities and Seibold's conduct, is to use the basic statutory interest rate formula, and thus I reject Seibold's fixed rate approach. Instead, I grant Seibold interest of the Federal Reserve discount rate of 0.96%, plus the statutory 5%, for 5.96%, on the money that was due to him on February 14, 2008. I grant him interest of 0.88% plus the statutory 5%, for 5.88%, on the money that was due to him on April 14, 2008. But, because Seibold is in part to blame for the protracted nature of this litigation, and because simple interest is fair to Seibold given his conduct and market realities, I do not grant him compounded interest or a fixed rate of

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[237] On February 14, 2008, the S&P 500 closed at 1,348.86; on August 31, 2012, it closed at 1,406.58. Google Finance, *S&P 500: INDEXSP:.INX Historical Prices*, http://www.google.com/finance/historical?q=INDEXSP:.INX. This is a total gain of 4.2%—nowhere near the 45% that Seibold asks for, when the 8.5% interest is compounded on an annual basis. The annual return of the S&P over this period was 0.9% on an annual compounded basis, almost 10 times less than what Seibold demands. In the same period, the Dow Jones Industrial Average, Seibold's preferred index, returned a marginally higher, but still low, 5.8%, which equates to an annual return on a compounded basis of 1.2%. Google Finance, *Dow Jones Industrial Average: INDEXDJX:.DJI Historical Prices*, http://www.google.com/finance /historical?q=INDEXDJX:.DJI; *see* P. Post-Tr. Reply Br. at 11 n.9.

[238] To support his claim for use of the legal rate, Seibold points out that Dow Jones has appreciated by 57% since July 2009, the date at which Noroton redeemed its largest investor. Of course, using this date does not take into account any losses Seibold might have suffered before this date, whether he invested in Noroton or not. As noted above, I am not considering any speculative arguments concerning what Seibold might have done with his money.

[239] Federal Reserve Bank of New York, *Historical Changes of the Target Federal Funds and Discount Rates*, http://www.newyorkfed.org/markets/statistics/dlyrates/fedrate.html.

interest on his claims.[240] It has not escaped me that Seibold set the tenor of litigation by filing initially baseless criminal and theft charges against Brennan and Camulos in 2009, even bringing his complaint to the attention of the Connecticut Attorney General's office, which, naturally, provoked Camulos to act in the intransigent manner it has since then.[241] In Seibold's own words, he "officially kicked the hornets' nest."[242] In the circumstances, he can't complain about getting stung.

B. Camulos Has Not Proven Any Money Damages Or That It Is Entitled To Disgorgement

Camulos argues that Seibold should be forced to disgorge money that he was paid while he worked at Camulos between January 2007 and May 2007 for his breach of fiduciary duty to it. In a disgorgement action, the breach of duty must be "related causally" to the profits earned by the defendant, or the injury suffered by the plaintiff.[243] Therefore, Camulos must show that it has been harmed by Seibold's breach of duty, or that Seibold has profited by it.

But, Camulos has not even alleged, much less proved, that it suffered material, economic harm arising out of Seibold's alleged breach of duty.[244] Instead, it has asked me to presume that Seibold's breaches of duty must have caused it harm despite

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[240] 6 *Del. C.* § 2301(a); *see Brandin v. Gottlieb*, 2000 WL 1005954, at *28-29 (Del. Ch. July 13, 2000). A court of equity has discretion to grant compound interest, just as it has discretion to deviate from the default rate of interest laid down by the legislature. *See, e.g.*, *Cobalt Operating, LLC v. James Crystal Enters.*, 2007 WL 2142926, at *31 (Del. Ch. July 20, 2007).
[241] Tr. 605:7-605:21 (Seibold – Cross); s*ee also* Orig. Compl. ¶¶ 227-70 (containing allegations of statutory violation of fair trade practices, statutory theft, aiding and abetting statutory theft, and civil conspiracy).
[242] Tr. 607:3-4 (Seibold – Cross).
[243] *Thorpe v. CERBCO, Inc.*, 1996 WL 560173, at *2 (Del. Ch. Sept. 13, 1996).
[244] Defs. Post-Tr. Op. Br. at 13-16.

Camulos' failure of proof, which I decline to do.[245] The record shows that the Fund performed well in this period, as evidenced by the $1.45 million increase in the value of Seibold's capital contribution.[246] Therefore, I turn now to the possibility that Seibold has profited from his breach.

There are two possible sources of profits that could be disgorged: Seibold's $2.8 million bonus for work done in 2006, which he was paid at the start of 2007, and the $147,460 salary that Seibold earned for his work in 2007. [247] To sustain a disgorgement claim for the money paid to Seibold, Camulos must show that Seibold's misconduct somehow unfairly increased his compensation, such as could occur if an investment manager falsely recorded gains on his positions and pumped up his resulting performance-based bonus. As I will explain in more detail, there is no unjust benefit from Seibold's time at Camulos to disgorge.

I deal first with the bonus. As the trial testimony shows, Camulos paid Seibold's bonus for 2006 in full knowledge of Seibold's allegedly poor performance.[248] If Camulos paid Seibold such a large bonus despite now claiming to have believed that he performed poorly, that was its own conscious choice. It may be that Camulos thought he was doing poorly. If so, it could have disciplined Seibold. But, Camulos did not introduce any

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[245] Camulos cites *Craig v. Graphic Arts Studio, Inc.*, 166 A.2d 444 (Del. Ch. 1960), for the proposition that a court may "infer" a causal relationship between a breach of a fiduciary duty to an employer and harm to that employer, where the employee left to manage a rival business which he set up while still working for his former employer. In this case, Seibold founded Noroton only *after* he left Camulos, not before. Thus, Seibold's breach of duty is very different from the breach in *Craig*.

[246] Pre-Tr. Stip. ¶¶ II.9, II.17.

[247] Defs. Post-Tr. Op. Br. at 15; JX 409 Ex. D (report of Kevin Sweeney (Jan. 27, 2012)). Of the $147,460 compensation, his gross pay was $131,541. Pre-Tr. Stip. ¶ II.28; JX 409 Ex. D.

[248] Tr. 49:11-50:7 (Brennan – Cross).

evidence of contemporaneous dissatisfaction, and the Fund did well during his employment.[249] Camulos rewarded Seibold for his work in 2006 in full knowledge of how he performed; there was thus no profit from Seibold's breach, as none of his breaches played a role in shaping the compensation he received.

As I have previously found, whatever performance difficulties Seibold had in 2006 – and I am not persuaded that there were any – had nothing to do with any breaching behavior. That behavior did not begin in earnest until 2007, and took up a trivial amount of work time.[250] Because there is no "causal relationship" between Seibold's bonus and his allegedly disloyal conduct, I reject this disgorgement claim.[251]

Nor is Camulos entitled to the return of the salary that Seibold received in 2007. Camulos has, again, failed to demonstrate the necessary causal connection between Seibold's salary and his supposed breach of fiduciary duty. There is no convincing contemporaneous evidence that Camulos felt that Seibold did not fairly earn his quite ordinary salary (by money manager standards) at a time when Camulos continued to do well. And if Camulos knew, as it claims, that Seibold was not doing a good job, and paid him anyway, that was Camulos' choice.[252]

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[249] *See, e.g.*, Tr. 166:1-6 (Seibold) (claiming that Seibold's profits in 2006 were between $50 million and $110 million); JX 130 (Camulos position report (Feb. 28, 2007)); JX 202 (letter from Richard Brennan to Camulos investors (June 7, 2007)) (noting that the Fund had returned 2.1% for May 2007, and 10.5% for the first five months of the year).

[250] Camulos' disgorgement claim therefore seems merely to be an instance of buyer's remorse. But a "superior right to … compensation does not arise simply because [the plaintiff], with the benefit of hindsight, challenges [the defendant's] disloyal acts." *Triton Constr. Co. v. E. Shore Elec. Servs., Inc.*, 2009 WL 1387115, at *24 (Del. Ch. May 18, 2009).

[251] *Id*. at *29.

[252] *E.g.*, Tr. 20:21-30:15 (Brennan) (discussing Seibold's poor performance).

Camulos has not shown that any deficiency in Seibold's performance resulted from his misconduct or, more importantly, that his misconduct caused some windfall payment to him. Camulos paid Seibold what it thought he was worth for the job it knew him to be doing. Therefore, Camulos is not entitled to any disgorgement of compensation paid to Seibold.

C. Camulos Has A Weak Claim For Injunctive Relief Against Seibold And Noroton, But The Court Will Grant It In A Limited Way

Earlier in this case, Camulos did everything it could to prove that Seibold's use of its information had caused it damages. It came up with strained theories to that effect. Its disgorgement argument was its last-gasp attempt to get Seibold to suffer monetarily in a big way, and I have found that that argument lacks merit.

Seeking something, Camulos latches on to the fact that, under the Confidentiality Agreement, Seibold stipulates that Camulos would be "damaged irreparably" if any provision of the Confidentiality Agreement were breached, and that such a breach would entitle Camulos to an "injunction or injunctions."[253] Camulos therefore seeks some form of injunction, and argues that the contractual clause requires that it be granted in that relief.

The Confidentiality Agreement is governed by New York law, which, in contrast to Delaware law, seems to give only slight weight to parties' contractual agreement that any breach will give rise to irreparable injury.[254] Even if New York law was more

[253] Defs. Post-Tr. Op. Br. at 23; CA ¶17.
[254] *Compare Ticor Title Ins. Co. v. Cohen*, 173 F.3d 63, 69 (2d Cir. 1999) (applying New York law, and noting that such a contractual provision might "arguably be viewed as an admission by

contractarian on this point, proof that there has been a breach would not translate into whatever injunction the injured party wanted. The usual requirements of equity apply, which require proportionality and sensibility.[255] Here, it is clear to me that a damages award would have been adequate to address any lost profits or competitive injury to Camulos, and that one was not ultimately sought not because it was impossible to calculate the harm to Camulos of Seibold's misconduct, but because there was no such material harm to be quantified.

That is not to say that money damages would have been fully adequate to address all other possible harms. As indicated, Seibold took some information (such as specific investor information containing passwords) that Camulos had a legitimate right to secure from misuse or even inadvertent disclosure by Seibold. The clause in the Confidentiality Agreement providing for injunctive relief also supports granting specific performance of Seibold's duty to return information.[256] But the injunctive relief necessary to address these kinds of harm was already largely provided through the litigation process itself. Seibold's access to Camulos information was limited through action of him and his counsel, and the record illustrates that the sensitive information Camulos talks about was returned to it. The record also evidences Seibold's cognizance, even before litigation, of

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[defendant] that plaintiff will suffer irreparable harm" if defendant breached the contract), *with Kan. City S. v. Grupo TMM, S.A.*, 2003 WL 22659332, at *5 (Del. Ch. Nov. 4, 2003) (holding that stipulation of "irreparable harm" in contract is binding for purposes of preliminary injunction).

[255] *See, e.g.*, *Bander v. Grossman*, 611 N.Y.S.2d 985, 989 (Sup. Ct. 1994) (noting that a court of equity should not grant relief that would be "disproportionate in its harm to defendant" (citation omitted)); *Ramone v. Lang*, 2006 WL 905347, at *18 (Del. Ch. Apr. 3, 2006) (requiring proportionality in granting of injunction).

[256] CA ¶ 17.

the duty to refrain from conduct that would arguably involve exploiting Camulos' information in a way that could be seen as diverting business from Camulos to his new fund Noroton.

For that reason, perhaps, Camulos has struggled to articulate clearly what sort of injunction it wants, but adamantly contends that it wants an injunction making sure it has gotten all of its information back.[257] But this court does not put in place injunctions for the sake of injunctions. Since litigation ensued, Camulos' counsel was invited repeatedly to make clear what information it thought was still in Seibold's or Noroton's possession.[258] Like its related spoliation claim, Camulos' arguments are confusing because they fail to explain what information Seibold has that harms it. I have little doubt that over the course of the years, some document somewhere fell through the cracks, was lost, or remains on some system. Unlike Camulos, though, I don't think that further evidence of human imperfection aids it. The weight of the evidence suggests that Seibold and his counsel made a good faith effort to identify and return Camulos' information, made sure that Seibold and Noroton could not use it for further business purposes, and placed that information only in the hands of litigation counsel for Seibold, who were bound to use it only for proper litigation purposes.

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[257] In a section header in its Post-Trial Opening Brief, Camulos demands that Seibold should be "[e]njoined [f]rom [u]sing" Camulos' confidential information. Defs. Post-Tr. Op. Br. at 21. But, in the text of its brief, it only argues that Seibold should be enjoined to return information. I therefore do not consider that a demand for a use injunction was fairly argued, and do not address one here. *See PharmAthene, Inc. v. SIGA Techs., Inc.*, 2011 WL 6392906, at *2 (Del. Ch. Dec. 16, 2011) ("[A] party waives any argument that it fails properly to raise ….").

[258] *See, e.g.*, Letter from Carl D. Neff, Esq., to the Court, C.A. No. 5176-CS, 45247576 (July 10, 2012).

Nonetheless, because Seibold did engage in misconduct, I will give Camulos the right to identify *with specificity* any information that should be returned to it, which it believes has not yet been returned. Camulos may, within three business days, give a list of *specific* items of information to Seibold and Noroton, who are then to ensure that they do not still possess the information, and whose attorneys will represent to Camulos the same. If Seibold and Noroton do find that they possess any of the information on Camulos' list, they are to copy it, deliver it to Camulos, and then expunge it from their computer systems and other electronic devices.

V. Attorney's Fees

The final question is that of attorney's fees. Camulos claims that it is entitled to its fees under the terms of the Subscription Agreement between Seibold and Camulos Partners.[259] Seibold claims that he is entitled to his fees under an exception to the American Rule, on the grounds that Camulos has litigated in bad faith.[260] For the following reasons, I decline to grant fees to either party, and the costs shall lie where they fell.

Camulos argues that it is entitled to attorney's fees in this action under a provision found in the Subscription Agreement that Seibold signed in November 2005 as a limited partner to the Fund. The Subscription Agreement, which binds Seibold and the Fund, and is governed by Delaware law,[261] provides as follows:

[259] Defs. Post-Tr. Op. Br. at 23-25.
[260] P. Post-Tr. Op. Br. at 15-16.
[261] SA ¶ 10.

> The Subscriber agrees to indemnify and hold harmless the Partnership, the General Partner and their affiliates … (the "Indemnified Persons") from and against any and all loss, damage, liability or expense, including reasonable costs and attorneys' fees and disbursements, which an Indemnified Person may incur by reason of, or in connection with … any failure by the Subscriber to fulfill any of the covenants or agreements set forth herein, in the Subscriber Information Form or in any other document provided by the Subscriber to the Partnership ….[262]

Camulos argues that the Confidentiality Agreement is an "other document" that was "provided by [Seibold] to the Partnership."[263] Camulos bases this argument on the fact that the Confidentiality Agreement, which was signed by Seibold, is an "Agreement between Camulos Capital LP and *each of its affiliates and advisees* …."[264] Camulos argues that, because the Fund is an affiliate of Camulos Capital, Seibold "provided" the Confidentiality Agreement to the Fund. And, because Seibold breached this document, as I have found, Camulos claims that he is liable for its attorney's fees under the Subscription Agreement.

In making this billiard bank-shot argument, Camulos asks me, in effect, to ignore the plain language in the Subscription Agreement. The Subscription Agreement says that a "*Subscriber* agrees to indemnify" Camulos for "any and all loss, damage, liability or expense" for any untrue "representation or warranty" made "in any other document *provided by the Subscriber to the Partnership*."[265] Fairly read, the clause references "any other document" a subscriber gives to Camulos only in the capacity of a Subscriber.

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[262] *Id.* ¶ 6 (emphasis added).
[263] Defs. Post-Tr. Reply Br. at 23.
[264] CA pmbl. (emphasis added).
[265] SA ¶ 6 (emphasis added).

Reading the Subscription Agreement as a whole,[266] I find that the contract contemplates limited circumstances under which Subscriber would provide "other documents" to Camulos. For instance, the Subscriber Information Form permits the General Partner to require a Subscriber to "deliver such documents as the General Partner may reasonably request to verify that the Subscriber qualifies as an eligible investor." If Seibold had responded with documents to such a request from the General Partner, that would be an example of another document "provided by the Subscriber to the Partnership." This interpretation consists with what a reasonable person signing the subscription agreement would expect.[267] Thus, the plain language of the indemnification clause does not contemplate documents given by the subscriber to the fund in other capacities, such as an employee of an affiliate, and I therefore decline to read it that way.

To prevail on its argument, then, Camulos has the burden to show that Seibold gave the document to Camulos in his capacity as a "Subscriber." One aspect of the case Camulos overlooks in making its argument is that Seibold was a promoter. Therefore, under normal circumstances, Seibold would have signed a confidentiality agreement *before* he became a Subscriber. Seibold signed the particular Confidentiality Agreement at issue in December 2006, but Camulos employees were required to sign new

[266] *Northwestern Nat'l Ins. Co. v. Esmark, Inc.*, 672 A.2d 41, 43 (Del. 1996) ("Contracts must be construed as a whole, to give effect to the intentions of the parties."); *accord* 11 Williston on Contracts § 32:5 (4th ed.) ("[A] contract will be read as a whole and every part will be read with reference to the whole.").

[267] *Eagle Indus., Inc. v. DeVilbiss Health Care, Inc.*, 702 A.2d 1228, 1232 (Del. 1997) ("Contract terms themselves will be controlling when they establish the parties' common meaning so that a reasonable person in the position of either party would have no expectations inconsistent with the contract language.").

confidentiality agreements on a yearly basis, and Camulos has made no showing that Seibold signed this Confidentiality Agreement or any of its prior versions as a Subscriber.[268] This would be odd to conceive of as contextually logical, in any event, and thus I find that Seibold did not provide the Confidentiality Agreement to Camulos as a "Subscriber."

But, even if I did not pay attention to the capacity in which Seibold signed the document, I would still find for him. Camulos relies on the provision in the Subscription Agreement stating that the attorney fee-shift will be triggered by any breach of the "agreements set forth herein [*i.e.*, in the Subscription Agreement], in the Subscriber Information Form *or in any other document* provided by the Subscriber to the Partnership."[269] If I am to rule for Camulos, I must find that the Confidentiality Agreement is an "other document." But, to do so would violate the "well-established rule of construction" that "'where general language follows an enumeration of … things, by words of a particular and specific meaning, such general words are not to be construed in their widest extent, but are to be held as applying only to … things of the same general kind or class as those specifically mentioned.'"[270] Here, the phrase "other document" is general language that must be interpreted in accordance with the specific references to the Subscription Agreement and the Subscriber Information Form. That is, the "other

[268] CA title ("Annual Certification"); *see* Tr. 222:23-223:4 (Seibold) (discussing annual certification process).
[269] SA ¶ 6.
[270] *Aspen Advisors LLC v. United Artists Theatre Co.*, 861 A.2d 1251, 1265 (Del. 2004) (quoting *Petition of State*, 708 A.2d 983, 988 (Del. 1998)).

document" must be related in some way to the Subscription Agreement.[271] I find that the Confidentiality Agreement is not such a document, because it was likely signed by employees of Camulos Capital who did not necessarily subscribe to the Fund, whereas the Subscription Agreement and Subscriber Information Form were surely signed by subscribers who were *not* employees of Camulos Capital. Therefore, it is not necessarily related to the Subscription Agreement and the Subscriber Information Form, and Seibold's breach of the Confidentiality Agreement has not triggered the fee-shifting provision.

As a final point, I observe that the Subscription Agreement in any event only entitles Camulos to "reasonable" attorney's fees.[272] Even if the Subscription Agreement did cover this situation, I would not find that Camulos would be entitled to its full costs, given its approach to litigating the case. Camulos has admitted that it owes Seibold at least $4.662 million, but has refused to give it back.[273] The testimony of key Camulos witnesses has been inconsistent, and at times false.[274] Camulos has asserted claims that that were groundless, and arguments that legally and factually, to be understated, lacked color.[275] Camulos' litigation tactics have not been "reasonable," and I would limit its fees accordingly.

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[271] *Cf. In re IAC/InterActive Corp*., 948 A.2d 471, 496 (Del. Ch. 2008) (noting that the meaning of general words in an agreement may be limited by the purpose to which the agreement relates).
[272] SA ¶ 6.
[273] Defs. Post-Tr. Reply Br. at 30.
[274] For example, Camulos' most important witness claimed that Camulos Capital did not have a bank account, a claim that he was forced to retract. Tr. 93:5-6 (Brennan – Cross).
[275] *See, e.g.*, Defs. Pre-Tr. Op. Br. at 26 (arguing that Seibold was unjustly enriched by the pay he received from Noroton, when that entity never generated profits, there was no evidence that his services did not justify his pay, and the record suggests that Noroton was a bad investment

I now turn to Seibold's own argument that he is entitled to fees under the "bad faith" exception to the American Rule.[276] Seibold points to Camulos' litigation overkill, changes of direction, and filing of colorless arguments and claims. It is true that Camulos' litigation strategy could warrant fee-shifting. But, Seibold's own litigation approach is hardly to be commended. Seibold's initial complaint set the tone for this litigation: he filed a 56-page complaint alleging "statutory theft" and "aiding and abetting statutory theft," and seeking damages in excess of $200 million.[277] And, most notably, he has sought an aggressive interest rate on his damages, without admitting at any time his obvious transmittal of confidential information for uses inimical to Camulos' best interests. Both parties, to be frank, have behaved less than admirably.

The party who seeks to benefit from the shifting of fees must itself act responsibly in the litigation.[278] In these circumstances, the court will not invoke its sparingly used

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for him); Defs. Pre-Tr. Reply Br. at 8 (claiming that Camulos Capital was not involved in the withholding of Seibold's Withdrawal Proceeds, which turned out to be untrue); Defs. Post-Tr. Op. Br. at 29 n.5 (claiming that a general partner is not obliged to honor a limited partnership agreement, and discussing veil-piercing in this context). *Cf.* Tr. 91:24-92:2 (Brennan – Cross) (admitting that Camulos Capital caused Seibold's Withdrawal Proceeds to be withheld); JX 367 (2009 Noroton income statement (Feb. 2, 2010)); 6 *Del. C.* § 17-403 (noting that a general partner is bound by a limited partnership agreement).

[276] The party who seeks the fee award must show "clear evidence of bad-faith conduct by the opposing party." *LeCrenier v. Cent. Oil Asphalt Corp.*, 2010 WL 5449838, at *5 (Del. Ch. Oct. 18, 2010).

[277] Orig. Compl. ¶¶ 244-66; *id*. at 55-56.

[278] *See, e.g.*, *Phillips v. Hove*, 2011 WL 4404034, at *1 (Del. Ch. Sept. 22, 2011) ("Because all of the litigants regrettably engaged in misconduct that could support fee-shifting, the doctrine of unclean hands applies with particular salience. All parties will bear their own fees and costs.").

authority to shift fees from Seibold to Camulos.[279] Justice dictates letting each side pay its own legal fees and costs.

VI. Conclusion

I now sum up in a rough way the outcome on each of the parties' various claims.

A. Seibold's Affirmative Claims

I find for Seibold on his first claim, which is that the General Partner and the Fund breached the Limited Partnership Agreement by causing the Withdrawal Proceeds to be withheld from Seibold. I also find in favor of Seibold on his third claim, namely that Camulos Capital tortiously interfered with the Limited Partnership Agreement. I do not find for Seibold on his unjust enrichment claim, because he has an adequate remedy at law.

As relief, I direct Camulos Capital to cause the Withdrawal Proceeds to be released from escrow to Seibold. I grant Seibold simple prejudgment interest, calculated in accordance with the method and rates described above, with post-judgment interest to run at the statutory rate. The interest is to be payable jointly and severally by Camulos Capital, the General Partner, and the Fund.

B. Camulos' Counterclaims

I find in favor of Camulos in part on its first counterclaim against Seibold, namely that he breached his fiduciary duty by taking Camulos Capital's property in preparation to compete with Camulos. I dismiss without prejudice Camulos' second counterclaim,

[279] *See Johnson v. Arbitrium (Cayman Islands) Handels AG*, 720 A.2d 542, 547 (Del. 1998) (per curiam) ("The Court of Chancery has broad discretion in fixing the amount of attorney fees to be awarded.").

that Seibold breached the Limited Partnership term sheet, because Camulos has waived it here and is pursuing it in litigation elsewhere. I find in favor of Camulos on its third counterclaim, that Seibold breached the Confidentiality Agreement, but do not find for Camulos on its fourth counterclaim, that Seibold breached the Limited Partnership Agreement.

I find for Camulos on its fifth, sixth, and seventh counterclaims against Noroton. These are, respectively, that Noroton tortiously interfered with the Confidentiality Agreement signed by Seibold; that Noroton aided and abetted Seibold's breach of fiduciary duty; and that Noroton converted Camulos' property.

I do not find for Camulos on its eighth counterclaim, for unjust enrichment, because Camulos has an adequate remedy at law.

I do not find for Camulos on its ninth and final counterclaim, namely its request for attorney's fees under the Subscription Agreement.

As relief, Camulos may draw up and submit to Seibold, Noroton, and the court, within three days of this decision, a list of specific items of information that it believes that Seibold and Noroton still possess. Seibold and Noroton are then to check that they do not have any such items in their possession. If they do possess any such item, they are to copy the items, expunge the items from their systems and devices, and give the copies to their attorney, who will represent to Camulos that Seibold and Noroton no longer possess the items.

* * *

Each side is to bear its own attorney's fees and costs. Seibold is to submit an implementing final judgment that addresses all claims in controversy in this case, within ten days, after notice as to form to Camulos.