

**STATE OF MINNESOTA
HENNEPIN COUNTY DISTRICT COURT**

TELLURIDE ASSET MANAGEMENT, LLC, Plaintiff, vs. ERIC FALKENSTEIN Defendant.	}	Civil Action No. _____--
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**PLAINTIFF’S EX PARTE MOTION FOR TEMPORARY
RESTRAINING ORDER AND TEMPORARY INJUNCTION**

Plaintiff Telluride Asset Management, LLC (“Telluride”) hereby moves the Court pursuant to Minn. R. Civ. P. 65 for the following:

- (a) issuance of a limited temporary restraining order pursuant to Minn. R. Civ. P. 65.01, restraining Defendant Eric Falkenstein (“Falkenstein”) from: (i) using or disclosing Telluride’s confidential or proprietary information; and (ii) misappropriating Telluride’s trade secrets; and
- (b) issuance, following additional briefing and a hearing, of a temporary injunction under Minn. R. Civ. P. 65.02 until a full trial on the merits can take place.

In support of this motion, Telluride incorporates by reference its Memorandum in Support of this Motion and its Verified Complaint that establishes Telluride has no adequate remedy at law and will suffer substantial and immediate irreparable harm unless the Court enjoins Falkenstein before he is heard in opposition. Copies of these documents will be delivered to Mr. Falkenstein and his counsel immediately after filing with the Court.

Telluride further states as follows:

1. Telluride operates hedge funds. Both individuals and institutions invest in Telluride's hedge funds. Telluride has extensive experience in operating hedge funds and in creating investment strategies, managing risk and successfully operating investment businesses.
2. Telluride has developed valuable trade secrets during the course of its business. These trade secrets give Telluride a distinct advantage over its competitors.
3. Telluride has taken reasonable steps to protect its trade secrets from disclosure including the use of multiple layers of security, specific user access control and auditing. In addition, Telluride requires all employees to sign confidentiality agreements containing confidentiality provisions that require the protection and non-disclosure of Telluride's trade secrets and confidential business information.
4. On January 22, 2004, Telluride hired Eric Falkenstein as a Portfolio Manager.
5. As a Portfolio Manager, Falkenstein's primary job responsibilities were to conceive, develop, implement, monitor and maintain systematic investment trading models for Telluride.
6. Telluride and Falkenstein executed a written agreement on January 22, 2004, entitled Employee Confidentiality and Non-Solicitation Agreement ("Confidentiality Agreement"). A copy is attached to the Verified Complaint as Exhibit A and is incorporated herein in its entirety by reference.
7. The Confidentiality Agreement constitutes a valid contract under Minnesota law.
8. The Confidentiality Agreement provides that "Employee agrees that all inventions, discoveries, computer software programs, trade concepts, designs, patents, ideas and copyrightable and/or patentable materials made, conceived or developed by Employee during the

term of this Agreement shall be owned in full by the Firm.” Verified Complaint, Ex. A § 2 (emphasis added).

9. The Confidentiality Agreement further provides that the Firm’s ownership of an invention would not apply to “an invention for which no equipment, supplies, facility or trade secret information of the Firm was used and which was developed entirely on the Employee’s own time, and (1) which does not relate (a) directly to the business of the Firm or (b) to the Firm’s actual or demonstrably anticipated research or development, or (2) which does not result from any work performed by the employee for the firm.” Verified Complaint, Ex. A § 2.

10. The Confidentiality Agreement informed Falkenstein that “[d]uring and by reason of employment with the Firm, Employee shall receive or have access to trade secrets, patents, copyrights and other confidential or proprietary information (collectively referred to in this agreement as ‘Confidential Information’) used in the Firm’s business which is not known or otherwise available by proper means through sources outside the Firm, and which therefore has value to the Firm and provides an actual or potential advantage over competitors, including, but not limited to, information of either a technical or commercial nature including, financial information, customer or client lists, employee or consultant information, market information, trading information, models, formulae, strategies, methodologies and the like and other specific financial and trading information.” Verified Complaint, Ex. A § 3.

11. The Confidentiality Agreement further provides that “Employee acknowledges that Confidential Information is a valuable, special, and unique asset of the Firm and that the sole and exclusive right, title and interest in and to Confidential Information is owned by the Firm.” Verified Complaint, Ex. A § 3.

12. The Confidentiality Agreement further required that Falkenstein, during the course of his employment with Telluride, “shall not use or disclose [Telluride’s] Confidential Information to any person or entity except as necessary for the proper performance of duties and responsibilities prescribed by the Firm” Verified Complaint, Ex. A § 4. It also requires that Falkenstein, after the termination of his employment for whatever reason, “shall not use or disclose Confidential Information to any person or entity other than the Firm for any reason” unless compelled to by court order or subpoena. Id.

13. The Confidentiality Agreement further required that Falkenstein “shall immediately and unconditionally surrender to [Telluride] all Confidential Information and all property belonging to [Telluride]” upon termination of his employment. Verified Complaint, Ex. A § 5.

14. During his employment at Telluride, Falkenstein was given access to Telluride’s Confidential Information, resources and employees in developing trading models, strategies and concepts for Telluride, including Telluride’s trade secrets and other confidential and proprietary information.

15. When Falkenstein began his employment with Telluride he brought with him a systematic fundamental domestic single stock equity trading model that he had previously developed (the “Original Model”). The Original Model used profitability and accruals as factors for estimating the expected returns of equities.

16. Falkenstein and Telluride agreed that if and when Falkenstein left his employment with Telluride, both he and Telluride were free to continue using the Original Model. However, as required by the Confidentiality Agreement, any and all modifications, revisions, additions, refinements, or improvements made to the Original Model (including all its factors) while

Falkenstein was employed by Telluride would belong to Telluride. Telluride, as the “full” owner of any and all such modifications, revisions, additions, refinements and improvements, was free to continue using any and all such modified models after Falkenstein’s termination. Falkenstein, however, could not use any of the modifications, revisions, additions, refinements or improvements made to the Original Model once he left Telluride’s employ.

17. While employed by Telluride, Falkenstein was responsible for monitoring, analyzing, diagnosing and further developing, modifying, revising, adding to, refining, and improving the Original Model. In collaboration with Telluride and during the course of his employment with Telluride, Falkenstein worked on, monitored, analyzed, diagnosed, modified, revised, added to, refined, and improved the Original Model (hereinafter all such modifications, revisions, additions, refinements, and improvements to the Original Model will be collectively called the “Telluride Modified Model”).

18. Falkenstein was also responsible for researching new trading models, strategies and concepts for Telluride. Falkenstein developed and implemented at least three new trading models, concepts and strategies for Telluride (hereinafter collectively called the “New Telluride Models”). The New Telluride Models used, among other things, volatility and capital issuance as factors for estimating the expected return of equities.

19. Falkenstein used Telluride’s trade secrets, proprietary information and resources in monitoring, analyzing diagnosing and developing, improving, revising and refining the Telluride Modified Model and in researching the new trading models, strategies and concepts for the New Telluride Models. In performing his work at Telluride, Falkenstein discussed and vetted proposed improvements, concepts, ideas, strategies, methodologies, and algorithms with

Telluride. Many of these concepts, ideas, strategies, methodologies, and algorithms were incorporated into the Telluride Modified Model and the New Telluride Models.

20. Telluride provided Falkenstein with the funds and all the resources necessary to develop, operate, and manage the Telluride Modified Model and the New Telluride Models.

21. In addition to his normal business hours at Telluride, Falkenstein often worked for Telluride from his home on weekends and evenings. Upon information and belief, Falkenstein carried out his work on computer(s) that he owned using information, data series, and other resources supplied by Telluride.

22. Falkenstein resigned from his position at Telluride on September 1, 2006. In his resignation letter, Falkenstein said that he had reviewed his agreements with Telluride and understood his continuing obligations. A copy of this letter is attached to the Verified Complaint as Exhibit B. However, he failed to return Telluride's property including the Telluride Modified Model and the New Telluride Models.

23. On or about February 16, 2007, Telluride learned that Falkenstein was planning on starting his own hedge fund and was proposing a trading strategy very similar to the Telluride Modified Model and the New Telluride Models.

24. Telluride contacted Falkenstein to confirm that he did not intend to use or disclose Telluride's trade secrets and confidential information in connection with the proposed strategy or use or disclose the Telluride Modified Model or the New Telluride Models. In a telephone conversation on or about February 16, 2007, Falkenstein assured Telluride that he was not using or disclosing any of Telluride's trade secrets or confidential information. He also agreed to send to Telluride all presentations and back tests that Falkenstein had submitted to any prospective employers or business partners. Falkenstein never followed through on this promise.

25. By letter dated February 20, 2007, Falkenstein instead asserted that “I have and will continue to fully comply with every provision” of the Confidentiality Agreement. A copy of this letter is attached to the Verified Complaint as Exhibit C. But Falkenstein admitted that he intended to use trading strategies that have “significant similarities . . . to what [he] did at Telluride.” Id. He further claimed that the similarities “include practices that I consider in the public domain” Id. However, having had access to and learned of Telluride’s trade secrets and proprietary information and practices, Falkenstein can now, after the fact, conveniently look for and find various isolated pieces of Telluride’s trade secrets and proprietary information and practices in the public domain. Knowing exactly where to look, Falkenstein now claims that each such piece can be found in the public domain. As but one example, Falkenstein admitted in his letter that he intended to use an algorithm that he used in the “sub-strategies at Telluride,” but claimed that this algorithm was widely described in introductory MBA finance. Id. Yet, this algorithm was provided to Falkenstein by Telluride. It was not in the Original Model that Falkenstein brought to Telluride and did not come from Falkenstein’s prior experience. Telluride instructed Falkenstein to implement that algorithm into the Telluride Modified Model.

26. On February 22, 2007, Telluride asked Falkenstein to “identify all similarities between your proposed strategy and to what you did at Telluride not just the similarities that are in the public domain.” A copy of this letter is attached to the Verified Complaint as Exhibit D. Telluride also asked Falkenstein to “identify the similarities with detailed particularity including by providing [Telluride] with copies of any computer software programs, excel spreadsheets and back testing information.” Id. Falkenstein failed to respond to Telluride’s request.

27. Telluride also asked Falkenstein to “identify the specific algorithms that you used on the “sub-strategies at Telluride” and that you intend to use in your proposed strategy. Please

further provide [Telluride] with copies of those algorithms.” Verified Complaint, Ex. D. Falkenstein failed to respond to Telluride’s request.

28. Telluride also asked Falkenstein to confirm that “you have surrendered all Confidential Information and all property belonging to Telluride as required by Paragraph 5 of the agreement.” Verified Complaint, Ex. D. Falkenstein again failed to respond to Telluride’s request.

29. Telluride repeated its request in a hand-delivered letter delivered on March 2, 2007. A copy of this correspondence is attached to the Verified Complaint as Exhibit F.

30. On March 9, 2007, Falkenstein responded to Telluride’s repeated inquiries and admitted that his proposed strategy used profitability, accruals, volatility, and capital issuance as factors for estimating the return of equities. These are the same four factors as are used in the Telluride Modified Model and in the New Telluride Models. However, Falkenstein claimed that he used public domain information to develop this same set of factors that he developed for and used at Telluride. He further admitted using “mean-variance optimization” as he did at Telluride but claims he wrote a new algorithm from scratch using public domain information.

31. On March 15, 2007, Falkenstein met with Peter Hajas, Telluride’s Chief Investment Officer and Chief Executive Officer, in an effort to convince Telluride that his proposed strategy did not use or disclose Telluride’s Modified Model, the New Telluride Models or Telluride’s trade secrets. However, Falkenstein provided only selected and redacted information concerning his proposed strategy. During this meeting, Falkenstein again admitted that he was using used profitability, accruals, volatility and capital issuance as factors for estimating the return of equities but did not reveal the manner in which he was intending to

implement these factors. He further admitted that he was using a “mean variance optimization” similar to what he was instructed to implement at Telluride.

32. Upon information and belief, the proposed trading strategy that Falkenstein intends to use appears to be substantially derived from the Telluride Modified Model, the New Telluride Models and Telluride’s trade secrets.

33. Telluride is likely to succeed on the merits of its breach of contract claim because there is no doubt that Falkenstein has violated the provisions of the Confidentiality Agreement.

34. Telluride is likely to succeed on the merits of its misappropriation of trade secrets claim because there is no doubt that (a) Falkenstein is in possession of Telluride’s trade secrets; (b) he is using Telluride’s trade secrets for his own benefit; (c) Telluride provided its trade secrets to Falkenstein in confidence; (d) Falkenstein has a contractual, common law and statutory duty not to use or disclose Telluride’s trade secrets; (e) Falkenstein’s proposed hedge fund is so similar to the job that Falkenstein was performing for Telluride and to the strategies that he was running at Telluride that he cannot possibly run his proposed hedge fund without using and disclosing Telluride’s trade secrets; and (f) such use and disclosure would be unfair and unjust to Telluride and would cause Telluride irreparable harm.

35. Falkenstein’s wrongful conduct is actionable and Telluride’s right to relief is clear.

36. The specific facts, shown by the Verified Complaint, establish that Telluride has no adequate remedy at law and will suffer substantial and immediate irreparable harm unless the Court enjoins Falkenstein before he is heard in opposition, as is more fully set forth in the memorandum in support of this motion.

37. As to each item of relief Telluride requests, the balance of the possible harms and the public interest favor Telluride because denial of such relief will inflict far greater injury on Telluride than the grant of such relief will inflict on Falkenstein.

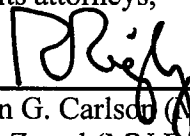
38. Telluride's counsel certify that they have made efforts to give Falkenstein notice of this motion by calling him, emailing copies of this motion and all accompanying documentation and serving him by messenger with copies of this motion and accompanying documentation. Telluride's counsel further certify that copies of this motion and accompanying documentation were served on Falkenstein's counsel at Dorsey & Whitney.

39. Notice to Falkenstein should not be required because immediate and irreparable harm will result to Telluride if Falkenstein is not temporarily restrained and enjoined from disclosing, relying upon, or using Telluride's trade secrets.

WHEREFORE, Telluride respectfully requests that this Court enter a temporary restraining order in the form attached and, after further discovery, briefing, and a full hearing, enter a temporary injunction.

Plaintiff TELLURIDE ASSET
MANAGEMENT, LLC

By its attorneys,



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March 21, 2007