

STATE OF MINNESOTA
COUNTY OF HENNEPIN

FILED
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BY _____ DEPUTY
HENNEPIN COUNTY DISTRICT
COURT ADMINISTRATOR
FOURTH JUDICIAL DISTRICT
CASE TYPE: OTHER CIVIL

TELLURIDE ASSET MANAGEMENT, LLC,
a Delaware Limited Liability Company,
Plaintiff,

Court File No.: 04-17921

COMPLAINT

vs.

STANLEY ZHENG,

Defendant.

Plaintiff, Telluride Asset Management, LLC, as and for its Complaint and causes of action against Defendant, Stanley Zheng, states and alleges as follows:

PARTIES

1. Plaintiff, Telluride Asset Management, LLC ("Telluride"), is a Delaware limited liability company with its principal place of business in Wayzata, Minnesota.
2. Defendant, Stanley Zheng ("Zheng"), is a former employee of Telluride, and upon information and belief currently resides at 91 Highland View, Irvine, CA 92603.

JURISDICTION AND VENUE

3. A true and correct copy of the Employment Agreement entered into between Telluride Asset Management and Zheng ("the Employment Agreement") is attached hereto as Exhibit A and incorporated herein for all purposes.

4. This Court has personal jurisdiction over the defendant pursuant to Minn. Stat. § 543.19.

5. This case is properly venued pursuant to Minn. Stat. § 542.09.

FACTS

6. Telluride is an investment advisor to a hedge funds and is located in Wayzata, Minnesota. As an investment advisor, Telluride directs investments into a variety of securities using various trading strategies. Both individuals and institutions invest in Telluride's hedge funds.

7. On or about June 10, 2004, as a condition of an offer of employment as a Portfolio Manager at Telluride, Zheng entered into an employee confidentiality and non-solicitation agreement ("the Employment Agreement") with Telluride.

8. As additional consideration to Zheng for entering into the Employment Agreement, Telluride made its trade secrets and confidential information known to him, including, but not limited to, financial information, market information, trading information, models, formulae, strategies and methodologies and other confidential and proprietary business information. Telluride generated and maintained all of this information at substantial expense.

9. As part of the Employment Agreement, Zheng agreed, among other things, that all inventions, discoveries, computer software programs, trade concepts, designs, patents, and ideas made, conceived, or developed by him during the term of his employment with Telluride was owned in full by Telluride.

10. As part of the Employment Agreement, Zheng also agreed that during the course of his employment and at anytime thereafter, he would not use or disclose Telluride's confidential information. He further agreed that upon termination of employment with Telluride,

he would unconditionally surrender to Telluride all equipment, products, supplies, records, notes, materials, code, drawings, photographs, computer programs, analytical and numerical methods, computer-generated or computer-retrievable data and other writings or recordings of any kind.

11. In addition to being supported by valuable consideration, the Employment Agreement contains reasonable limitations in duration, scope, and activities restrained, and these limitations do not impose a greater restraint than is necessary to protect Telluride's goodwill and business interests.

12. Throughout his employment, Zheng was responsible for managing a portfolio and developing new strategies for use within Telluride's hedge fund.

13. On or about November 16 2004, Zheng voluntarily resigned from his employment with Telluride. At the time of his resignation, Zheng informed Telluride that he intended to work for a hedge fund located in New York City.

14. At the time of his resignation, Zheng represented to Telluride that he returned all property belonging to Telluride, including but not limited to computer-generated diskettes, CD ROMs, software, files, and client lists. He further represented that he did not have possession of any of Telluride's computer generated files or other documents in his possession.

15. Despite his representations to Telluride at the time of his resignation, Zheng has maintained confidential and proprietary property of Telluride, including computer generated documents and files.

16. Zheng intends to use, and/or has used, the Telluride's confidential and proprietary property for his own benefit and for the benefit of others.

COUNT ONE
Injunctive Relief

17. Telluride realleges and restates the allegations contained in paragraphs 1 through 16 above as if fully set forth herein.

18. Despite the unambiguous terms of the Employment Agreement, Zheng has acted, and is continuing to act, in violation of the terms of that Agreement.

19. While still employed by Telluride, Zheng misappropriated confidential and proprietary information, including financial information, market information, trading information, models, formulae, strategies and methodologies and other confidential and proprietary business information.

20. The balancing of the equities favors the issuance of a temporary restraining order, and a temporary and permanent injunction against Zheng.

21. Unless Zheng is enjoined from the foregoing conduct, Telluride will suffer irreparable injury and harm in the form of:

- a) disclosure of confidential and trade secret information which is solely Telluride's property; and
- b) present economic loss, which is unascertainable at this time, and future economic loss, which is incalculable.

22. Telluride has no adequate remedy at law.

COUNT TWO
Breach of Contract

23. Telluride realleges and restates the allegations contained in paragraphs 1 through 22 above as if fully set forth herein.

24. Zheng entered into a contract with Telluride by signing the written Employment Agreement.

25. The Employment Agreement is reasonable and supported by adequate consideration.

26. Zheng breached the Employment Agreement with Telluride by among other things, misappropriating, using or otherwise divulging confidential and proprietary information causing substantial harm to Telluride.

27. Upon information and belief, Zheng has engaged in other activity, the full extent and nature of which will be determined as discovery in this matter proceeds, which constitute further breaches of the terms of the Employment Agreement.

28. As a result of Zheng's breach of contract, Telluride is entitled to damages in an amount to be determined at trial.

COUNT THREE
Misappropriation of Trade Secrets

29. Telluride realleges and restates the allegations contained in paragraphs 1 through 28 above as if fully set forth herein.

30. As a trusted Telluride employee, and by virtue of entering into the Employment Agreement, Zheng owed a duty to act in Telluride's best interests and not to use or disclose Telluride's confidential information to competitors either during his employment or after the termination of that employment.

31. Zheng recognized in the Employment Agreement that certain trade secrets and confidential information would be made available to him that Telluride had a legitimate business interest to keep confidential. Zheng further recognized that Telluride had a legitimate business interest in protecting its business from unfair competition.

32. Telluride took reasonable and considerable efforts, including requiring Zheng to sign the Employment Agreement as a condition of his employment to maintain the confidentiality and secrecy of the trade secrets and confidential business information.

33. Upon information and belief, Zheng has used, disclosed, relied upon, and otherwise misappropriated Telluride's trade secrets and confidential information in violation of Minn. Stat. §325C.01, et. seq., and is conspiring to breach, and is breaching, the Employment Agreement.

34. As a result of Zheng's conduct, Telluride has been irreparably damaged.

35. Zheng's misappropriation and continuing misappropriation of Telluride's trade secrets was intentional, willful and malicious. Accordingly, Telluride is entitled to full compensation and remedies, including, but not limited to, an award of punitive damages in an amount to be determined at trial, together with its reasonable attorneys' fees.

COUNT FOUR
Unfair Competition

36. Telluride realleges and restates the allegations contained in paragraphs 1 through 35 above as if fully set forth herein.

37. Each of the acts committed by Zheng in misappropriating Telluride's trade secrets and other confidential and proprietary information and breaching his restrictive covenants with Telluride constitutes an act of unfair competition which causes Telluride severe and serious injury, both by advantage in the marketplace and potential damage to Telluride's goodwill and reputation, for which Telluride should be compensated and from which Defendant should be enjoined.

COUNT FIVE
Conversion

38. Telluride realleges and restates the allegations contained in Paragraphs 1 through 37 above as if fully set forth herein.

39. Telluride owns a proprietary interest in its confidential and trade secret information.

40. Zheng retained certain confidential and trade secret property belonging to Telluride, including but not limited to, financial information, market information, trading information, models, formulae, strategies and methodologies.

41. Despite having no right to do so, Zheng took Telluride's property and converted it to his own use, or the use by of another, thereby depriving Telluride of its property and of the value of such property.

42. As a result of Zheng's conversion of Telluride's property, Telluride has suffered and will continue to suffer monetary damages. Telluride is entitled to injunctive relief barring Zheng from using its confidential and proprietary information. Additionally, Telluride is entitled to damages in an amount to be determined at trial.

COUNT FIVE
Trespass to Chattel

43. Telluride realleges and restates the allegations contained in Paragraphs 1 through 42 above as if fully set forth herein.

44. Telluride believes and therefore avers that prior to resigning from his employment at Telluride, Zheng destroyed confidential and proprietary information belonging to Telluride, thereby depriving Telluride of the value of such information.

45. By virtue of Zheng destroying Telluride's property, Telluride is entitled to damages in an amount to be determined at trial.

PRAYER FOR RELIEF

WHEREFORE, Telluride respectfully requests that the Court grant Telluride the following relief:

1. That the Court enter an order for a temporary restraining order, and a temporary and permanent injunction enjoining Zheng from:

- a) Taking any action of any character or nature, whether intentional or unintentional, having the purpose or effect of disclosing, utilizing, disseminating or in any manner dealing with Telluride's confidential and proprietary information, trade secrets or other property;
- b) Contacting in any way, either directly or indirectly, including through written or verbal communication or through marketing or advertising, any individual or company whose identity or other information was obtained from Plaintiff's trade secret information, confidential information or customer list for any competing business purpose or any purpose detrimental to Plaintiff; and,

2. That the Court order Zheng to return the original and all copies of Telluride's property, and all documentation, notes, letters, memoranda, communications, lists, computer disks, computer data, or recording in any form dealing with, mentioning or relating to Telluride's customers, intellectual property and confidential and/or trade secret information.

3. That Telluride recover all available damages incurred due to Zheng's breach of contract, unfair competition, misappropriation and/or disclosure of trade secret information, conversion of and/or trespass to its property, including the recovery of double damages for misappropriation of trade secrets.

4. That Telluride recover all of its allowable costs, disbursements and penalties in this action, as the Court deems proper.

5. That Telluride recover all attorneys' fees.

6. That Telluride has all further relief in law or in equity to which it may show it is justly entitled.

Dated: December 2, 2004

SEATON, BECK, PETERS, BOWEN
& FEUSS, P.A.

By 

Thomas R. Revnew (#0295620)
Kyle T. Kustermann (#0304050)
7300 Metro Boulevard, Suite 500
Minneapolis, MN 55439
Telephone: (952) 896-1700

ATTORNEYS FOR TELLURIDE
TELLURIDE ASSET MANAGEMENT LLC.

**TELLURIDE ASSET MANAGEMENT
EMPLOYEE CONFIDENTIALITY AND NON-SOLICITATION AGREEMENT**

This Confidentiality and Non-Solicitation Agreement (the "Agreement") is entered into as of the 10 day of June, 2004 between Telluride Asset Management, LLC (the "Firm") and Stanley Zheng (the "Employee") sometimes referred to jointly as the "Parties."

WHEREAS, Firm is willing to employ Employee to perform certain services and Employee seeks employment with the Firm.

NOW, THEREFORE, in consideration of the promises and covenants recited herein, the parties agree as follows:

1. **At-Will Employment.** Employee acknowledges that he/she has entered into the employment relationship with the Firm voluntarily and understands that the relationship is one of "at-will" employment. Accordingly, Employee understands that either the Firm or Employee may terminate the relationship at will for any reason, with or without cause, notice or prior warning or discipline, at any time. Employee acknowledges that this Agreement is not intended to be a contract of employment, nor is any part of it intended to be a promise or representation of any specific term or condition of employment, and that no agent of the Firm has made any offer or representation to Employee in connection with his or her employment which is contrary to at-will employment.

2. **Ownership of Materials and Ideas.** 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. The Parties acknowledge and agree that this paragraph does 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.

3. **Confidential Information.** During 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. Confidential Information shall not include any information that is or becomes part of the public domain through no act or omission of Employee. 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.

4. **Nondisclosure of Confidential Information.** During the course of Employment with the Firm, Employee shall not use or disclose Confidential Information to any person or entity except as necessary for the proper performance of duties and responsibilities prescribed by the Firm,



and only as specifically authorized by the Firm and in accordance with procedures established by the Firm. Following termination of Employee's employment with the Firm, whether voluntary or otherwise, Employee shall not use or disclose Confidential Information to any person or entity other than the Firm for any reason, provided that Employee may disclose Confidential Information if compelled by court order or enforceable subpoena, but only if Employee notifies the Firm immediately after service upon Employee of any such order or subpoena and cooperates fully with Firm's efforts to contest or quash such order or subpoena prior to any such disclosure.

Nothing in this Section shall be construed to restrict Employee's use of general know-how and experience in future employment, so long as Confidential Information is not used or disclosed. The covenants set forth in this Nondisclosure of Confidential Information Section shall be without time or geographic limitation and shall survive and be enforceable after the termination of Employee's employment with the Firm so long as the information in question continues to be Confidential Information as defined above.

5. Surrender of Confidential Information and Company Property upon Termination. Promptly upon termination of Employee's employment with the Firm, whether voluntary or otherwise, and at any time upon the Firm's request, Employee shall immediately and unconditionally surrender to the Firm all Confidential Information and all property belonging to the Firm, including but not limited to equipment, products, supplies, records, notes, materials, code, drawings, photographs, computer programs, analytical and numerical methods, computer-generated or computer-retrievable data, and other writings or recordings of any kind, whether in physical, documentary, audio, visual, electronic or any other format, relating to the actual or anticipated business of the Firm.

6. Non-Solicitation Covenant.

(a) *Non-Solicitation.* Employee agrees that, so long as this Agreement is in effect, and for a period of one (1) year after the termination of his or her employment, Employee will not, directly or indirectly, as a sole proprietor, member of a partnership, stockholder, investor, officer or director of a corporation, or as an employee, agent, associate or consultant of any person, partnership or corporation, other than Firm, or in any other capacity:

(i) solicit, induce or attempt to persuade any employee or consultant of Firm or any of its affiliates to terminate an employment or consulting relationship;

(ii) solicit, accept or engage in any business related to the business conducted by Firm from any clients, customers, or prospective or former clients or customers of Firm or its affiliates; or

(iii) solicit or perform services of any nature on behalf of any person or entity which solicits, accepts or engages in any business related to the business of Firm with clients, customers, or prospective or former clients or customers of the Firm or its affiliates.

(b) *Injunctive Relief.* Without limiting the right of Firm or any of its successors or permitted assigns to pursue all other legal and equitable rights available to them for violation of the covenants set forth in subparagraph (a), it is agreed that such other remedies cannot fully compensate Firm and its successors and assigns for such a

violation and that Firm and its successors and assigns shall be entitled to injunctive relief to prevent violation or continuing violation hereof. It is the intent and understanding of each party that if, in any action before any court or agency legally empowered to enforce this covenant, any term, restriction, covenant or promise is found to be unreasonable and for that reason unenforceable, then such term, restriction, covenant or promise shall be deemed modified to the extent necessary to make it enforceable by such a court or agency.

7. Governing Laws. This Agreement shall be construed in accordance with and pursuant to the laws of the State of Minnesota without regard to Minnesota's choice of law principles, and the Parties agree to jurisdiction and venue in the state and federal courts in Minnesota, in case of any dispute concerning the construction, interpretation, application or enforcement of this Agreement.

8. Binding Effect. This Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective successors and assigns, provided that this Agreement shall not be assignable by Employee without prior consent of Firm.

9. Entire Agreement. This Agreement constitutes the entire agreement between the Parties with respect to the subject matter hereof. This Agreement supersedes any and all other prior agreements, either oral or in writing, between the Parties. Each party hereby waives any claim against the other party with respect to, and discharges the other party from any obligation or liability arising under any prior agreement and fully releases the other party with respect thereto. No change or modification of this Agreement shall be valid unless it is in writing and signed by Employee and an authorized officer of Firm. No waiver of any provision of this Agreement shall be valid unless in writing and signed by the person or party to be charged.

10. Notice. Any and all notices, designations, consents, offers, acceptances or any other communication provided herein shall be in writing and deemed given when personally delivered or when deposited in the United States mail, registered or certified mail, return receipt requested, postage prepaid, addressed as follows:

If to Firm: Telluride Asset Management
 1000 Parkers Lake Road
 Wayzata, MN 55391

If to Employee: _____

11. Severability. If any portion or portions of this Agreement shall be, for any reason, deemed invalid or unenforceable, the remaining portion or portions shall nevertheless be valid, enforceable and carried into effect, unless to do so clearly violates the present legal and valid intention of the parties hereto.

12. Headings. The headings in this Agreement are inserted for convenience only and are not to be considered in construction of the provisions hereof.

TELLURIDE ASSET MANAGEMENT

By: [Signature]
(Signature)
Its: Authorized Agent
(Print title)
6/14/04
(Date)

EMPLOYEE

By: [Signature]
(Signature)
Stanley Zheng
(Print name)
June 10, 2004
(Date)