

**Safe Flight Instrument Corp. v Sporn**

2010 NY Slip Op 31397(U)

May 26, 2010

Sup Ct, NY County

Docket Number: 108497/2008

Judge: Emily Jane Goodman

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6-4-10

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

PRESENT: **EMILY JANE GOODMAN**

PART 17

Index Number : 108497/2008

SAFE FLIGHT INSTRUMENT

INDEX NO. \_\_\_\_\_

vs

SPORN, RICHARD A. ESQ.

MOTION DATE \_\_\_\_\_

Sequence Number : 004

MOTION SEQ. NO. \_\_\_\_\_

DISMISS

MOTION CAL. NO. \_\_\_\_\_

The following papers, numbered \_\_\_\_\_ is motion to/for \_\_\_\_\_

PAPERS NUMBERED

Notice of Motion/ Order to Show Cause — Affidavits — Exhibits ...

Answering Affidavits — Exhibits \_\_\_\_\_

Replying Affidavits \_\_\_\_\_

Cross-Motion:  Yes  No

Upon the foregoing papers, it is ordered that this motion

*attached*

*is decided per*

MOTION/CASE IS RESPECTFULLY REFERRED TO JUSTICE FOR THE FOLLOWING REASON(S):

**FILED**  
JUN 07 2010  
NEW YORK  
COUNTY CLERK'S OFFICE

Dated: 5/26/10

**EMILY JANE GOODMAN**

J.S.C.

Check one:  FINAL DISPOSITION

NON-FINAL DISPOSITION

Check if appropriate:  DO NOT POST

SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF NEW YORK: IAS PART 17

-----X  
SAFE FLIGHT INSTRUMENT CORPORATION,

Plaintiff,

- against -

Index No. 108497/2008

RICHARD A. SPORN, ESQ., DAVID E.  
DOUGHERTY, ESQ., THE LAW OFFICES OF  
DENNISON, SCHULTZ & McDONALD and LOWE  
HAUPTMAN HAM & BERNER, LLP,

Defendants.

-----X

EMILY JANE GOODMAN, J.S.C.:

In this action alleging legal malpractice and breach of fiduciary duty, defendant Richard A. Sporn, Esq., moves, pursuant to CPLR 3211 (a) (7), to dismiss the amended complaint as against him on the ground that it fails to state a cause of action.

**FILED**  
JUN 07 2010  
NEW YORK  
COUNTY CLERK'S OFFICE

**FACTUAL ALLEGATIONS**

Plaintiff Safe Flight Instrument Corporation (Safe Flight), a company engaged in inventing and commercializing technology used in and related to aircraft, was founded by Leonard Greene (Greene) in 1946 and incorporated in 1975. Greene was Safe Flight's sole shareholder from 1975 until 2001, and its chairman and president until 2003. He allegedly developed many of Safe Flight's inventions and applied for many patents by means of applications which listed him as the inventor, and then assigned the patents that he obtained to Safe Flight.

In 2003, Greene allegedly appointed himself as honorary chairman of Safe Flight, stepped down from his positions as its chairman and president, and transferred his interest in Safe Flight to various members of his family. From 2003 until 2006, when Greene died, he allegedly worked on, inter alia, developing inventions and nine related patents (the Patents) which are at issue in this litigation. During that time, Greene allegedly continued to be an employee of Safe Flight, and had: exclusive use of the chairman's office at Safe Flight's facilities, a Safe Flight employee as his secretary and a company car; and unrestricted access to Safe Flight's premises, equipment, engineers and other personnel, intellectual property, trade secrets, confidential and proprietary information,

technology and other resources. Safe Flight alleges that: it afforded Greene access to the foregoing resources with the understanding, expectation and agreement that any patent he developed and/or applied for would be assigned to Safe Flight for the sole benefit of Safe Flight; Greene used the foregoing resources in developing and applying for the Patents; and Greene had a fiduciary duty to assign the Patents to Safe Flight.

Defendant Richard A. Sporn, Esq., was allegedly Safe Flight's primary outside counsel from the late 1990s until January 2008. Sporn also allegedly represented Greene personally during that time, in connection with various tax and estate issues, and issues relating to Greene's divorce. Sporn served as a member of Safe Flight's board of directors, from October 2001 until June 2003, and as the company's corporate secretary from October 2003 until January 8, 2008. From 2002 until the end of 2007, Safe Flight paid Sporn \$5,000 per month to act as the company's primary outside counsel and corporate secretary.

Sporn allegedly issued invoices to Greene which indicate that, in July 2005, Sporn assisted Greene in incorporating Greenleaf Innovations Inc. (Greenleaf), an entity purportedly formed with the intent that Greene would assign certain patent rights to it. The invoices also allegedly indicate that Sporn advised Greene concerning the formation of Greenleaf, and concerning issues relating to Greene's estate and patent rights. Sporn was allegedly appointed as, and currently continues to be, Greenleaf's president. Sporn allegedly drafted Greene's last will and testament, executed on November 8, 2006 (the Will), which: appointed Sporn as the executor thereunder; provided that any of Greene's patents and inventions which had not been assigned to Greenleaf prior to Greene's death should be so assigned, in the sole discretion of Sporn as executor; and bequeathed all of Greenleaf's stock to six of Greene's children (the Siblings).

In January 2006, Greene had allegedly informed his son Randall Greene (Randall) -- who was then and is now Safe Flight's president, and who is not one of the Siblings to whom the Will bequeathed shares of Greenleaf -- that he was considering assigning the patent rights to certain inventions that he was developing to a company called Greenleaf, in order to benefit certain of his

children and not Safe Flight's other shareholders.<sup>1</sup> Randall thereafter allegedly advised Greene that he could not assign any such patent rights to Greenleaf, because such an assignment would be an improper diversion of Safe Flight's corporate assets for the benefit of certain Safe Flight shareholders at the expense of others. Randall also allegedly discussed the matter with Sporn, and advised Greene and Sporn that any such attempt to assign patent rights to an individual or entity other than Safe Flight would be a breach by Greene and Sporn of their fiduciary duties to Safe Flight.

Randall allegedly believed that Greene and Sporn had heeded his advice and discontinued any plan to assign patents to any person or entity other than Safe Flight. Safe Flight allegedly did not learn that Greene and Sporn had continued their scheme to assign patents to Greenleaf until after Greene's death, when the Will was published. As of the time of Greene's death, he had not assigned the Patents to Greenleaf. Thereafter, while still serving as Safe Flight's primary outside counsel and corporate secretary, Sporn allegedly took various steps to develop certain of the Patents and to ensure that the Patents were included in Greene's estate, although he purportedly knew or should have known that the assignment of the Patents to Greenleaf would be an improper diversion of Safe Flight's corporate assets to a competing entity for the benefit of only a subset of Safe Flight's shareholders. Sporn allegedly solicited an opinion from Safe Flight's long-time patent counsel, defendant David Dougherty, Esq. -- who was allegedly a member, from time to time, of defendant law firms The Law Offices of Dennison, Schultz & McDonald (DSM) and Lowe Hauptman Ham & Berner, LLP (LHHB) -- which would identify Greene's unassigned patents, analyze the value of those patents, and assess any claim that Safe Flight could potentially make to those patents. Safe Flight allegedly terminated Sporn from representing Safe Flight in January 2008.

The complaint in this action, as originally pleaded, alleged claims against Greene's estate, Greenleaf, and the Siblings, and sought to recover the rights to the Patents. The amended complaint (the Complaint) alleges: that, "[a]fter months of litigation under the original [c]omplaint, the

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<sup>1</sup>As of 2003, the shareholders of Safe Flight were allegedly seven of Greene's children (i.e., the Siblings and Randall), two children of a deceased son of Greene, and Greene's ex-wife and her children (*see* Randall Affid., ¶ 8).

Siblings acknowledged Safe Flight’s rightful ownership of the Patents and assigned all of their interests in the Patents and all of their interest in Greenleaf to Safe Flight”; that the Siblings have “acknowledged that Safe Flight is and always was the rightful owner of the Patents”; and that, “[i]n return, Safe Flight dismissed its claims against the Siblings, Sporn in his capacity of Executor of the Estate and ... Greenleaf,” and those parties “have been ... dismissed as defendants in this case” (Complaint, ¶¶ 3, 6, 14).

The Complaint asserts eight causes of action, of which three allege claims against Sporn: the first cause of action alleges legal malpractice; the second alleges breach of fiduciary duty; and the fifth alleges that Sporn aided and abetted Greene’s and Dougherty’s breaches of their fiduciary duties to Safe Flight. The remaining five causes of action assert claims against: Dougherty, for legal malpractice, breach of fiduciary duty, and aiding and abetting breaches of fiduciary duty; and against DSM and LHHB for legal malpractice, breach of fiduciary duty and aiding and abetting breaches of fiduciary duty.

### DISCUSSION

Sporn’s motion to dismiss is granted with respect to the second cause of action, which alleges breach of fiduciary duty, and denied with respect to the first and fifth causes of action, which allege legal malpractice and aiding and abetting breaches of fiduciary duty.

The breach of fiduciary duty claim against Sporn is redundant, and is dismissed, because it is “essentially based on the same facts and seek[s] the same relief” as the legal malpractice claim against Sporn (*AmBase Corp. v Davis Polk & Wardwell*, 30 AD3d 171, 172 [1st Dept 2006], *affd* 8 NY3d 428 [2007]; *see also Weil, Gotshal & Manges, LLP v Fashion Boutique of Short Hills, Inc.*, 10 AD3d 267, 271 [1st Dept 2004]).<sup>2</sup>

The legal malpractice and breach of fiduciary duty claims share in common the allegations

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<sup>2</sup>Safe Flight’s breach of fiduciary duty claim alleges that Sporn breached the fiduciary duty which he owed to Safe Flight “in his capacity as an attorney for Safe Flight” or “in his capacity as Safe Flight’s legal counsel” but does not allege that Sporn breached any fiduciary duty which he may have owed to Safe Flight in his capacity as its corporate secretary.

that: Sporn was Safe Flight's attorney during the time when Greene was developing and applying for the Patents (Complaint, ¶¶ 194, 211); Sporn was also acting as Greene's attorney while he was developing and applying for the Patents (*id.*, ¶¶ 196, 213); while serving as Safe Flight's primary outside counsel, but in his capacity as Greene's personal attorney, Sporn assisted Greene in incorporating Greenleaf, counseled Greene with regard to the proposed assignment of the Patents to Greenleaf, and drafted the Will, which named Sporn as the executor of the Will and provided that, at the sole discretion of Sporn as executor, all of Greene's patents and inventions that had not been assigned to Greenleaf prior to his death should be so assigned (*id.*, ¶¶ 197-199, 214-216); Sporn, in his capacity as the executor of Greene's estate, engaged in efforts to probate the Will, which -- absent the settlement between Safe Flight, the Siblings, Greene's estate and Greenleaf -- would have resulted in the Patents being transferred or assigned to Greenleaf and/or the Siblings (*id.*, ¶¶ 200, 217); Safe Flight never granted Sporn a waiver or consent with respect to the conflicts of interest that his representation of Greene and Safe Flight entailed (*id.*, ¶¶ 204, 230); and from 2005 until the time of his termination as counsel for Safe Flight, Sporn was engaged in a persistent pattern of disloyalty to Safe Flight in connection with his ongoing efforts to assist Greene with his plans to assign or transfer the Patents to an entity and/or persons other than Safe Flight (*id.*, ¶¶ 203, 232).

Safe Flight concedes that both the legal malpractice claim and the breach of fiduciary duty claim arise in connection with Sporn's alleged conflict of interest in representing Safe Flight, on the one hand, and Greene and Sporn's own interests, on the other. However, Safe Flight argues that the two claims are premised upon different facts because: the legal malpractice claim is based upon Sporn's alleged failure to disclose to Safe Flight that Greene was planning to assign the Patents to an entity other than Safe Flight, and to represent Safe Flight's interests by attempting to stop Greene from doing so (*see* Pl. Mem. of Law, at 21; Complaint, ¶ 202); and the breach of fiduciary duty claim is based upon Sporn's acts in setting up Greenleaf as an entity which competed with Safe Flight, taking a pecuniary interest in Greenleaf as its president, advising Greene in connection with the assigning and/or bequeathing of the Patents to an entity or persons other than Safe Flight, assisting Greene in diverting Safe Flight's business opportunities in the Patents away from Safe Flight,

securing a legal opinion from Dougherty as to whether Greene could deprive Safe Flight of ownership of the Patents, and giving his own personal interests and/or the interests of others priority over Safe Flight's interests (*see* Pl. Mem. of Law, at 21; Complaint, ¶¶ 223-227). Thus, Safe Flight contends that the two claims are not duplicative, because the legal malpractice claim is based upon Sporn's alleged negligence in failing to exercise the requisite standard of care in the performance of his duties as Safe Flight's attorney, whereas the breach of fiduciary duty claim is based upon Sporn's alleged actions in diverting corporate opportunities or assets away from Safe Flight, and to the benefit of himself and others (*see* Pl. Mem. of Law, at 21-22). Safe Flight also argues that its breach of fiduciary duty claim is not duplicative of its legal malpractice claim because the two claims seek different damages. Safe Flight asserts that it is entitled to disgorgement of the fees and compensation that were paid to Sporn during the period of his alleged disloyalty, and apparently contends that the recovery of those amounts is sought only as part of its breach of fiduciary duty claim and/or may not appropriately be sought as part of its legal malpractice claim (Pl. Mem of Law, at 24).

Safe Flight's claims are not premised upon sufficiently separable or different facts as to warrant Safe Flight's assertion of the breach of fiduciary duty claim in addition to its legal malpractice claim. "The attorney-client relationship is both contractual and inherently fiduciary," and, although "a complaint seeking damages alleged to have been sustained by a plaintiff in the course of such a relationship will often advance one or more causes of action based upon the attorney's breach of some contractual or fiduciary duty owed to the client," "courts normally treat the action as one for legal malpractice only" (*Ulico Cas. Co. v Wilson, Elser, Moskowitz, Edelman & Dicker*, 56 AD3d 1, 8-9 [1st Dept 2008]). Here, the legal malpractice and breach of fiduciary duty claims are based upon essentially the same factual allegations: that Sporn assisted Greene in his plan to transfer rights in the Patents, which legitimately belonged to Safe Flight, to an entity and/or persons other than Safe Flight; and that Sporn did so by, *inter alia*, (i) counseling Greene, in his capacity as Greene's personal attorney, as to how rights in the Patents could be transferred to such other entity and/or persons, (ii) forming Greenleaf, and acting as its president, with that intended

purpose, and (iii) drafting the Will which named Sporn as the executor of the Will, and provided for the assignment of the Patents, with that intended purpose.

Thus, although the two causes of action highlight different facets, they seek to impose different legal theories upon essentially the same facts and are not premised upon sufficiently separable or different facts so as to warrant Safe Flight's assertion of the breach of fiduciary duty claim in addition to its legal malpractice claim (*compare Kurman v Schnapp*, 2010 NY App Div LEXIS 3722 [1st Dept 2010] [breach of fiduciary cause of action based on defendant lawyer's representation of Queens Medallion Leasing Inc. and its two partners in 2007-2007 against plaintiff in Westchester County Supreme Court, where the attorney had previously represented plaintiff on a substantially related issue, was not duplicative of a time barred malpractice cause of action based on the allegation that the Taxi and Limousine Commission had the erroneous impression in 2005 and 2006 that the attorney was still representing plaintiff]; *Ulico Cas. Co. v Wilson, Elser, Moskowitz, Edelman & Dicker*, 56 AD3d at 1, 9, 11 [breach of fiduciary duty claim based upon defendant law firm's efforts in setting up a business that competed with the plaintiff was not duplicative of a legal malpractice claim based upon the firm's alleged negligence in advising plaintiff to pay three benefit claims which allegedly should not have been paid; nevertheless the firm's liability was "limited to the claim for legal malpractice" because a plaintiff cannot seek to "recover damages for breach of fiduciary duty on legal grounds less rigorous than those required for recovery under a theory of legal malpractice"]).

Further, Safe Flight's argument, that the two causes of action are not duplicative because Safe flight seeks separate damages, is not persuasive. The legal malpractice and breach of fiduciary duty claims, as pleaded in the Complaint, each allege: that, because of Sporn's conduct, "Safe Flight has suffered and will continue to suffer damages in an amount [which is not specified but is] to be determined at trial," and that, "because of the egregious, willful and wanton nature of Sporn's conduct, punitive damages in [an] amount to be determined at trial should also be awarded" (Complaint, ¶¶ 208-209, 235-236). Insofar as the Complaint refers to the disgorgement of legal fees, those references are not contained in either the legal malpractice claim or the breach of fiduciary duty

claim, and do not appear to be specifically identified with either of those claims (*see e.g. id.*, ¶ 1 and at 47 [requesting, in a general “prayer for relief,” judgment “ordering ... Sporn to disgorge fees paid to him by Safe Flight during his period of disloyalty to Safe Flight”]). Safe Flight has failed to establish that its claim for Sporn’s disgorgement of legal fees may only be asserted as part of a breach of fiduciary duty claim, and not as a part of a legal malpractice claim, or, some other claim (*see e.g. Mecca v Shang*, 258 AD2d 569, 570 [2d Dept 1999] [stating that the plaintiff’s “cause of action for disgorgement of legal fees must ... be dismissed since it ... is predicated upon the same factual allegations as the malpractice claim, and seeks damages which may be recovered on that cause of action”]; *see also Ulico Cas. Co. v Wilson, Elser, Moskowitz, Edelman & Dicker*, 56 AD3d at 12 [stating that, “*(u)nlike a cause of action for breach of fiduciary duty*, the circumstances of an attorney’s discharge by a client may afford a basis for recoupment of legal fees *independent of any claim of legal malpractice*” (emphasis added)]).

Accordingly, Safe Flight’s breach of fiduciary duty claim is duplicative of its legal malpractice claim, and is dismissed. Sporn’s motion to dismiss is denied, however, with respect to Safe Flight’s claims alleging legal malpractice and aiding and abetting breaches of fiduciary duty.

Sporn argues that Safe Flight’s claims for legal malpractice and aiding and abetting breaches of fiduciary duty must both be dismissed because Safe Flight cannot establish that it suffered any damages which were proximately caused by Sporn’s conduct. Sporn asserts that, because Safe Flight has now concededly recovered the rights to the Patents, its only possible injury would be the fees and expenses it incurred in recovering those rights. Sporn contends that he did not proximately cause that injury because -- regardless of whether he had disclosed Greene’s plans concerning the Patents to Safe Flight or acted differently in some other manner -- Greene would, in any event, have proceeded with his plans to assign the rights to the Patents to an entity and/or persons other than Safe Flight. Thus, Sporn argues, Safe Flight would have had to incur the same fees and expenses in litigating its entitlement to the Patent rights that it did, in fact, incur. According to Sporn, any claim by Safe Flight that it would not have had to prosecute such litigation if Sporn had acted differently, or that the expense of such litigation would have been less, is merely speculative.

Recovery for legal malpractice “requires proof of three elements: (1) the negligence of the attorney; (2) that the negligence was the proximate cause of the loss sustained; and (3) proof of actual damages” (*Ulico Cas. Co. v Wilson, Elser, Moskowitz, Edelman & Dicker*, 56 AD3d at 10 [citation and internal quotation marks omitted]). It requires a plaintiff to establish, inter alia, that “but for the attorney’s negligence, the plaintiff would have prevailed in the matter or would have avoided damages” (*id.* [citation and internal quotation marks omitted]).

The Complaint alleges that “[t]he Siblings and Greenleaf would never have obtained their wrongful interest in the patents but for Defendants’ malpractice and breaches of fiduciary duty, and by their aiding and abetting Greene’s breaches of [his] fiduciary duty to Safe Flight,” and that Safe Flight “incurred significant costs to recover its interests in the Patents and to remedy and minimize the damages it suffered from being deprived of its interests in the Patents (Complaint, ¶¶ 4-5). The Complaint also asserts, as previously indicated, that Safe Flight is entitled to an order directing Sporn to disgorge the fees which Safe Flight paid to him during the period of his alleged disloyalty to Safe Flight (Complaint, ¶ 1 and at 47).

“In assessing a motion under CPLR 3211 (a) (7), ... a court may freely consider affidavits submitted by the plaintiff to remedy any defects in the complaint” (*Leon v Martinez*, 84 NY2d 83, 88 [1994]) and “preserve inartfully pleaded, but potentially meritorious claims” (*Cron v Hargro Fabrics*, 91 NY2d 362, 366 [1998] [citation and internal quotation marks omitted]). Randall has submitted an affidavit, in opposition to Sporn’s motion, which asserts: that, if Sporn had informed him that Greene’s “intention to assign the Patents to an entity other than Safe Flight [continued] after January 2006, Safe Flight would have immediately taken steps to assure the Patents were being assigned to Safe Flight and/or that Greene no longer had access to Safe Flight resources, personnel and proprietary information”; that, if Sporn had provided “appropriate legal counsel to Greene ... and represented Safe Flight’s interests by attempting to stop Greene from assigning the[] Patents to an entity other than Safe Flight -- instead of facilitating Greene’s plan -- Greene most assuredly would not have gone through with his plan and would have assigned the Patents to Safe Flight”; and that Sporn’s conduct has, therefore, “damaged [Safe Flight] in the amount it has cost to pursue this

litigation to remedy the results of Sporn's malpractice" (Randall Affid., ¶¶ 14, 17).

Randall further asserts that -- if Sporn had properly represented Safe Flight's interests, and Greene had, nevertheless, still proceeded with his plans to assign the Patents to an entity or persons other than Safe Flight, and Safe Flight had, therefore, been required to prosecute litigation with respect to its rights in the Patents -- such litigation, commenced at an earlier date, would have been less complex and less expensive than the litigation which has actually transpired, because it would have involved (i) only the three Patents which Greene had developed and applied for at that time, instead of the nine Patents which were ultimately involved, and (ii) fewer defendants (*id.*, ¶¶ 18-19; *see also* Pl. Mem. of Law, at 19). Randall asserts, additionally, that, even if Sporn's wrongful conduct merely caused a delay in Safe Flight's prosecution of litigation which it would have had to prosecute in any event, that delay caused Safe Flight damages by "delaying Safe Flight's ability to commercialize the inventions which are the subject of the[] Patents and delaying its expansion into various technological areas addressed by the Patents" (Randall Affid., ¶ 20). Randall reaffirms that Safe Flight is seeking disgorgement of the fees which Safe Flight paid Sporn during the period of his alleged disloyalty (*id.*, ¶ 21).

Sporn's assertion that Safe Flight's alleged damages are purely speculative lacks merit.

To survive a pre-answer motion to dismiss pursuant to CPLR 3211 (a) (7), a pleading need only state allegations from which damages attributable to the defendant's conduct may reasonably be inferred. At this early stage of the proceedings, plaintiff is not obliged to show ... that [it] actually sustained damages, but only that damages attributable to [defendant]'s conduct] might be reasonably inferred.

(*Fielding v Kupferman*, 65 AD3d 437, 442 [1st Dept 2009] [citations and internal quotation marks omitted].) Safe Flight has sufficiently averred that -- "but for" Sporn's alleged negligence in failing to properly represent Safe Flight's interests in connection with Greene's plans to assign the Patents to Greenleaf and/or certain of his children, and Sporn's alleged breaches of fiduciary duty in assisting Greene in carrying out those plans -- Safe Flight would not have incurred the litigation expenses that it incurred in recovering its interests in the Patents, or, at least, would have incurred a lesser amount of litigation expenses. This court "do[es] not regard as pure speculation" Safe Flight's assertions that it would not have incurred the full amount of the litigation expenses which it did incur if Sporn

had adequately represented Safe Flight's interests in connection with Greene's plans to assign the Patents to Greenleaf and/or certain of his children rather than to Safe Flight (*id.*).

Moreover, as previously set forth, Safe Flight's claim for disgorgement of legal fees "seeks damages which may be recovered on [its] cause of action" for malpractice (*Mecca v Shang*, 258 AD2d at 570), or may otherwise be recovered, independent of a cause of action for malpractice or breach of fiduciary duty (*Ulico Cas. Co. v Wilson, Elser, Moskowitz, Edelman & Dicker*, 56 AD3d at 12) and Sporn has failed to establish that Safe Flight has not adequately pleaded a basis upon which to recover such damages.

Sporn's argument that Safe Flight's cause of action for aiding and abetting breaches of fiduciary duty should be dismissed because Safe Flight cannot establish that it suffered any damages proximately cause by Sporn, is denied for the reasons stated above regarding the legal malpractice cause of action. Furthermore, "[a] claim for aiding and abetting a breach of fiduciary duty requires: (1) a breach by a fiduciary of obligations to another, (2) that the defendant knowingly induced or participated in the breach, and (3) that plaintiff suffered damage as a result of the breach" (*Kaufman v Cohen*, 307 AD2d 113, 125 [1st Dept 2003]). Safe Flight's claim against Sporn for aiding and abetting breaches of fiduciary duty alleges, inter alia, that Sporn aided Greene in his breaches of the fiduciary duty which he owed to Safe Flight, and that Safe Flight suffered damage as a result of those breaches by Greene. Sporn does not assert that Safe Flight has not adequately alleged that it suffered damage as a result of Greene's breaches of a fiduciary duty which he owed to Safe Flight.

### CONCLUSION AND ORDER

For the foregoing reasons, it is hereby

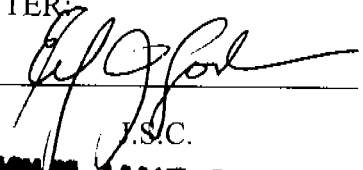
ORDERED that Richard Sporn's motion to dismiss the amended complaint as against him is granted, in part, but only to the extent that the amended complaint's second cause of action is dismissed; and it is further

ORDERED that Richard Sporn is directed to serve an answer to the amended complaint within 10 days after service of a copy of this order with notice of entry.

**This Constitutes the Decision and Order of the Court.**

Dated: May 26, 2010

ENTER:

  
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J.S.C.

**EMILY JANE GOODMAN**

**FILED**  
JUN 07 2010  
NEW YORK  
COUNTY CLERK'S OFFICE