

**Barons Media, LLC v Shapiro Legal Group, PLLC**

2024 NY Slip Op 30710(U)

March 6, 2024

Supreme Court, New York County

Docket Number: Index No. 652481/2023

Judge: Joel M. Cohen

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This opinion is uncorrected and not selected for official publication.

SUPREME COURT OF THE STATE OF NEW YORK  
 COUNTY OF NEW YORK: COMMERCIAL DIVISION PART 03M

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BARONS MEDIA, LLC,		INDEX NO. <u>652481/2023</u>
Plaintiff,		MOTION DATE <u>07/14/2023</u>
- v -		MOTION SEQ. NO. <u>002</u>
SHAPIRO LEGAL GROUP, PLLC,		
Defendant.		<b>DECISION + ORDER ON MOTION</b>

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HON. JOEL M. COHEN:

The following e-filed documents, listed by NYSCEF document number (Motion 002) 14, 15, 16, 17, 18, 19, 20, 21, 22, 51, 52, 53, 97, 98, 117 were read on this motion to DISMISS.

Defendant Shapiro Legal Group, PLLC’s (“Defendant” or “Shapiro”) motion to dismiss Plaintiff Barons Media, LLC’s (“Plaintiff” or “Barons”) Complaint pursuant to CPLR 3211(a)(5) and (a)(7) is **granted in part**. Barons’ claim for a declaratory judgment is **dismissed**. The motion is **denied** with respect to Baron’s aiding and abetting breach of fiduciary duty claim without prejudice to renewal based on the result of the Florida Action.

**A. Background**

In 2021, Barons commenced a special proceeding (Index No. 152278/2021) to obtain discovery from Shapiro for use in a case pending in Florida state court against its former partners (the “MKB Partners”) in KMBR Media (“KMBR”) (*Barons Media, LLC v. KMBR Media, et al.*, Case No. 2020-007200-CA-01 [Miami-Dade County Circuit Court] [the “Florida Action”]). In the Florida Action, Barons alleges that the MKB Partners breached their fiduciary duties by,

among other things, wrongfully terminating KMBR, diverting payments from Barons, and misusing proprietary information created by Barons.

Barons' petition was granted in part (NYSCEF 19), and Barons was awarded partial reimbursement of its production expenses (*Barons Media, LLC v Shapiro Legal Group, PLLC*, 2023 N.Y. Slip Op. 32469[U], [N.Y. Sup Ct, New York County 2023] [the "Special Proceeding"]). Plaintiff subsequently filed this plenary action asserting claims for aiding and abetting breach of fiduciary duty and a declaratory judgment.

Barons' Complaint (NYSCEF 1) alleges that Shapiro, "a middleman between advertisers who generate interest regarding potential mass tort cases and the actual law firms that represent the plaintiffs of those cases" (Cplt. ¶5), aided the MKB Partners' breaches of fiduciary duty. Among other things, Barons alleges that Shapiro assisted the MKB Partners in creating a new entity to divert funds owed to Barons; restricted Barons' access to and miscategorized financial information; and misappropriated confidential information created by Barons (Cplt. ¶¶20-83). Barons also asserts that Shapiro ran a parallel marketing scheme with two of the MKB Partners to divert business from KMBR and, therefore, Barons (Cplt. ¶¶84-97).

Barons seeks two broad categories of declaratory relief (Cplt. ¶¶108-115). First, Barons seeks declarations that Shapiro was paid fees that were not distributed to Barons. Second, Barons seeks declarations that Shapiro has failed to produce or misrepresented that it does not possess certain documents.

## B. Discussion

### a. Defendant's Statute of Limitations Defense is Withdrawn Because Plaintiff's Claims Were Tolloed During the COVID-19 Pandemic

Defendant's primary argument in its initial moving papers was that Plaintiff's claims were time barred because the alleged breach occurred in January of 2020, more than three years before the Complaint was filed. However, Defendant has withdrawn its statute of limitations argument in light of Executive Order 202.8 (9 NYCRR 8.202.8), which "tolled" any "specific time limit for the commencement, filing, or service of any legal action . . . until April 19, 2020" and was ultimately extended through November 3, 2020 (*Murphy v Harris*, 210 AD3d 410, 411 [1st Dept 2022]).

### b. The Complaint Adequately States a Claim for Aiding and Abetting Breach of Fiduciary Duty

On a motion to dismiss for failure to state a claim, the factual allegations set forth in the Complaint are presumed to be true and the Court need "determine only whether the facts as alleged fit within any cognizable legal theory" (*Leon v Martinez*, 84 NY2d 83, 87-88 [1994]). "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]).

The Complaint adequately alleges that Shapiro provided substantial assistance to the MKB Partners' various alleged breaches of fiduciary duty (*Appell v LAG Corp.*, 41 AD3d 277, 277 [1st Dept 2007] [collecting cases]). While Shapiro vigorously contests certain facts, Barons need not prove its allegations to survive a motion to dismiss (*Cohen v Saks Inc.*, 169 AD3d 515, 515 [1st Dept 2019]). Thus, Shapiro's motion to dismiss Baron's aiding and abetting claim is

denied. However, Shapiro may renew its motion based on the outcome of the Florida Action and may also raise its arguments on summary judgment or, if necessary, at trial.

**c. Plaintiff's Declaratory Judgment Claim is Dismissed**

Barons' declaratory judgment claim is dismissed because Barons has not identified a "justiciable controversy" as required by CPLR 3001. Instead, the declarations sought are duplicative of the aiding and abetting breach of fiduciary duty claim in this action and the discovery issues in the Special Proceeding (*Nationstar Mtge., LLC v Ocwen Loan Servicing, LLC*, 194 AD3d 490, 493 [1st Dept 2021]). Whether Shapiro earned fees, made, or withheld payments, misused Barons' confidential information, or mischaracterized revenues are facts that will be decided in connection with the aiding and abetting claim (*Upfront Megatainment, Inc. v Thiam*, 215 AD3d 576, 578 [1st Dept 2023]).

As Barons may obtain "full and adequate relief" in connection with its other claims, declaratory relief is not appropriate and the claim is dismissed without any need to declare the rights of either party (*245 E. 19 Realty LLC v 245 E. 19th St. Parking LLC*, 223 AD3d 604, 607 [1st Dept 2024]). Barons may also conduct discovery in this action to establish its claims, further demonstrating why a declaration that Shapiro did not provide or misrepresented what documents exist is unwarranted. Barons' request, in the alternative, for leave to replead is denied for failure to provide a "proposed amended or supplemental pleading" as required by CPLR 3025(b) or "any specific information about the nature of the proposed claims" (*Triumph Enterprises Corp. v Webster Auto Repair & Serv. Ctr. Inc.*, 216 AD3d 444, 445 [1st Dept 2023] [citation omitted]).

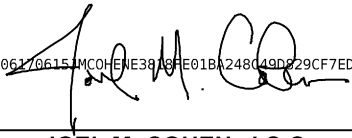
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Accordingly, it is

**ORDERED** that Defendant’s motion to dismiss the Plaintiff’s Complaint is **GRANTED IN PART** insofar as the Second Cause of Action for a declaratory judgment is **DISMISSED**; the motion is otherwise **DENIED**; and it is further

**ORDERED** that the parties file a joint status letter on or by **April 26, 2024**, as to the status of the Florida Action including proposed dates for a preliminary conference.

This constitutes the decision and order of the Court.

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JOEL M. COHEN, J.S.C.

3/6/2024  
DATE

CHECK ONE:

CASE DISPOSED

NON-FINAL DISPOSITION

GRANTED

DENIED

GRANTED IN PART

OTHER

APPLICATION:

SETTLE ORDER

SUBMIT ORDER

CHECK IF APPROPRIATE:

INCLUDES TRANSFER/REASSIGN

FIDUCIARY APPOINTMENT

REFERENCE