Silverstein v Borukhin
2026 NY Slip Op 30258(U)
January 20, 2026
Supreme Court, New York County
Docket Number: Index No. 650418/2021
Judge: Jennifer G. Schecter
Cases posted with a "30000" identifier, i.e., 2013 NY Slip Op 30001(U), are republished from various New York State and local government sources, including the New York State Unified Court System's eCourts Service.
This opinion is uncorrected and not selected for official publication.

SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY: COMMERCIAL DIVISION

PRESENT: **HON. JENNIFER G. SCHECTER** **PART** 54

Justice

----------X

YEHUDAH SILVERSTEIN,

Plaintiff,

- v -

ERIC BORUKHIN, CYAN MANAGEMENT LLC, MB TRAVEL CORP. D/B/A DOWNTOWN TRAVEL,

Defendants.

----------X

INDEX NO. 650418/2021

DECISION AFTER TRIAL

Introduction

Plaintiff Yehudah Silverstein owns 50% of the membership interests in Cyan Management LLC (Cyan), a company he formed together with defendant Eric Borukhin that developed an online travel booking platform. Most of the development work was performed by a team of software engineers in Russia, led by non-party Maria Zaytseva under the auspices of a Russian company called Antorica LLC (Antorica). Plaintiff asserts derivative claims for breach of fiduciary duty based on misappropriation of trade secrets and diversion of corporate opportunities. He also seeks direct surcharges based on Borukhin's failure to properly account for certain expenses that he proffered to justify an alleged underpayment of distributions.

Plaintiff essentially claims that Borukhin conspired with Zaytseva to steal Cyan's software and that they told a fake story for the first time on summary judgment--that rather than Antorica being a subsidiary through which Cyan would develop the software and essentially serve as a sham to evade Russian taxes (Dkt. 289 at 7; *see* Dkt. 271 at 2-3), it was really a legitimate company owned by Zaytseva that has all of the rights to the software that was being developed for Cyan.

A bench trial was held from March 31 through April 3, 2025 (*see* Dkts. 284-287). At trial, it became clear that the version of events proffered by Silverstein (*see* Dkt. 254) was basically correct and that Zaytseva, while quite knowledgeable and capable, was not telling the truth (*see also* Dkt. 289 at 4-17). Zaytseva and Borukhin were not credible witnesses. It was not difficult to reach this conclusion after observing their testimony and considering the credible evidence plaintiff submitted.

Plaintiff, however, despite making a strong showing on liability, ultimately failed to submit admissible, persuasive evidence supporting a valid award of damages on his derivative

claims. Indeed, after the parties rested, the court did not understand the damages plaintiff was seeking (*see* Dkt. 287 at 61-62).[1]

As discussed below, plaintiff did not submit credible evidence of the amount of lost profits that Cyan would have made but for the source-code misappropriation or any other reliable way to calculate derivative damages. He does raise certain valid objections to the accounting for which damages are recoverable. For the reasons that follow, recovery is awarded only in the form of limited surcharges in the amount of plaintiff's underpaid distributions, defendants' claim for recovery from plaintiff is rejected, and the court rejects all claims for punitive damages, attorneys' fees, indemnification, and sanctions.

Derivative Claims

Plaintiff did not make any serious effort to value the software or business. He did not submit an expert valuation report or meaningfully analyze the financial records in evidence in a manner that would permit the court to reach a reliable conclusion regarding value. Rather, he conclusorily maintains that the court may rely on a single data point--the Tinkoff sale--to infer that the value was "not less than $1,000,000" despite the sale price actually being $731,614 (Dkt. 293 at 9). The court is not persuaded that this transaction is a reliable indicator of value. Among many other issues, "the evidence showed that by the time of the Tinkoff license and sale transactions there were multiple products in the marketplace offering the same functionalities as the B2C Software" (Dkt. 292 at 11) and there is no evidence that "this one-off transaction to a Russian bank could be duplicated" as "the record shows that Antorica was only able to garner what it did from Tinkoff because of a 'lock in' effect" and that "Tinkoff had been working with Antorica's software for many years and believed it would cause delays to start all over with a new developer" (*id.* at 13). The $1,000,000 amount is not properly tethered to credible evidence permitting such a damages award. It is not based on any lay or expert methodology other than plaintiff's counsel proffering a nice round number a bit higher than the contract price and unpersuasive arguments about how to calculate a reasonable royalty (*see* Dkt. 289 at 24). This is not a credible way to prove damages (*see DPB Family LLC v Eutychia Group LLC*, 2024 WL 2274929, at *4 [Sup Ct, NY County May 20, 2024]).

The failure to prove damages requires dismissal of plaintiff's derivative claims (*Mohinani v Charney*, 208 AD3d 404, 405 [1st Dept 2022]).[2]

---

[1] This was a serious concern before trial as well and is the reason the court compelled plaintiff to file a pre-trial brief even though he did not do so before the pre-trial conference (*see* Dkt. 230). Aside from the claim for pro rata proceeds from the Tinkoff sale, that brief did not meaningfully address the amount of damages sought (*see* Dkt. 236). Plaintiff's post-trial briefs fare no better (*see* Dkts. 290, 293).

[2] In light of this conclusion, defendants' arguments about the serious issues with plaintiff's expert testimony regarding the source code are academic. Borukhin's lack of credibility and the court's critiques of his accounting, moreover, have no bearing whatsoever on the credibility of defendants' technical expert, Judy Etchison.

The Accounting

Borukhin's accounting (Dkt. 198 [the Accounting]) reveals that his calculations of the distribution of funds from the two Tinkoff transactions—the license and the sale—are improperly supported in certain respects and that Borukhin must be surcharged for the amount of plaintiff's underpaid distributions.

The License

Borukhin explains that "the total funds received by Antorica from the Tinkoff Licensing Transaction were $175,412.82"; that Antorica retained 25%; and thus "the remaining 75% ($131,558.62) was due to Cyan" (Dkt. 292 at 25). Plaintiff is not wrong to express skepticism about Antorica's compensation in light of Borukhin's general lack of credibility and the sham story proffered at trial, particularly since the evidence of the purported 75-25 cost-plus agreement is thin (Dkt. 257 at 7-8; *see, e.g.*, Dkt. 214). Plaintiff, however, admitted that he consented to the 75/25 split with respect to the much-more-substantial sale (Dkt. 254 at 15 ["Borukhin's proposal regarding the allocation of the proceeds of the sale included 25% for 'Masha and Team.' He explained that Zaytseva had brought the Tinkoff deal and was entitled to the fee. I did not see any reason to argue about it. I saw this as an opportunity to recoup some of my investment, which I had considered at this point as a potential write-off. **So I agreed with the proposal**."] [emphasis added]). The court will therefore credit the evidence regarding this same split for the license.

The Accounting itself concedes, however, that Borukhin cannot substantiate the expenses that MB Travel Corp. (MB) allegedly paid Antorica that supposedly exceeded the $131,558.62 to which Cyan was entitled (Dkt. 198 at 12 ["we have concluded that there is insufficient accounting evidence to substantiate this claimed expense"]). This concession is consistent with settled law (*Polish Am. Res. Corp. v Byrczek*, 270 AD2d [1st Dept 2000]; *see Matter of Johnson*, 166 AD3d 1435, 1436 [3d Dept 2018]). The court rejects Borukhin's attempt to walk back this concession at trial and in his post-trial brief by claiming that his own Accounting "inadvertently failed to credit [him] for the funds that MB advanced to Antorica for the Cyan software modifications needed for the Tinkoff license and thus, mistakenly concluded that Borukhin would owe Silverstein $65,779.91, before offsets" (*see* Dkt. 292 at 26). The court does not credit the suggestion that this omission was inadvertent because it was based on the fact that "Antorica has not provided an invoice for this additional work, and MB Travel cannot document the payments" (Dkt. 198 at 12). Proffering such evidence and attempting to disavow this concession for the first time at trial is impermissible, and in any event, wholly incredible (*see O'Mahony v Whiston*, 2023 WL 2020049, at *5-8 [Sup Ct, NY County Feb. 15, 2023], *affd* 224 AD3d 609 [1st Dept 2024]). Under these circumstances, the court holds Borukhin to this admission (*see id.* at *6; *see also Becker v Perla*, 2025 WL 1643809, at *3 [Sup Ct, NY County June 10, 2025]). Thus, plaintiff is entitled to his 50% share of the $131,588.62, which is $65,779.31.

The Sale

Borukhin asserts that "the total sale price was $731,614" and that after deducting $41,448 of expenses "the remaining gross proceeds were $690,166" (Dkt. 292 at 26). "Antorica then retained 25% of this sum, ($172,541.50) with Plaintiff's consent, leaving the remaining 75% ($517,624.50) for Cyan" (*id.*). Borukhin then asserts that "Antorica deducted $33,227.89 from Cyan's share of the proceeds of the sale for past due contributions Silverstein owed from November 2016 to March 2017 as Borukhin had already paid his 50% share of those expenses" and that "$54,028.00 was deducted for development costs owed by Borukhin to Antorica related to MB" (*id.*). Thus, Borukhin avers that "prior to any setoffs, [he] would owe Silverstein $20,800.11 ($54,028.00 - $33,277.89)" (*id.* at 26-27).

Relatedly, Borukhin explains that "after these adjustments, $430,368.61 was ultimately transferred from Antorica to Cyan"; that after receiving these funds Cyan paid several past due fees including $198.00 in mailbox fees, $48,400.00 for U.S.-based software development to Technology Transfer to enable the code to function in the Russian market, and $4,250.00 in accounting fees from 2017 to 2021" and that there were "anticipated future fees [of] $5,466.00 in operational fees (i.e., accounting and tax related fees, mail services fees, etc.) for Cyan from 2021 to 2024" (*id.* at 27). "In total, these expenses amounted to $58,314.00, leaving $372,054.61 available for distribution" (*id.*).

Plaintiff's Damages

Adding the adjudicated $65,779.31 amount related to the license plus the $20,691 that Borukhin acknowledges was owed (*see id.*, citing Dkt. 278 at 3) to half of the net proceeds of $372,054.61 ($186,027.31), plaintiff would be owed $272,497.62 if the court credited Borukhin's accounting of the sale.

Plaintiff has two major objections. The first is that Antorica is not entitled to a 25% share--but as noted the court has overruled this objection based on plaintiff's own testimony. The second is that there is insufficient support for $128,725 of Antorica's "past due invoices" that relate to "work necessary to prepare the software for sale" (*see* Dkt. 293 at 12). This amount is addressed in the Accounting (Dkt. 198 at 12 ["Antorica additionally deducted $128,725 for its past due invoices for the work necessary to prepare the software for sale, including documentation and legal work, and for servers and other expenses incurred in maintaining the Cyan software from its last invoice (May 2017) to the time of the sale"]). The Accounting, however, does not cite any supporting documentation for these expenses. Rather, it only cited a "conversation with Eric Borukhin on November 14, 2023" (*see id.* n 27). Verbally telling an accounting expert that expenses were incurred is no substitute for actually submitting documentation of such expenses (*see DPB Family*, 2024 WL 2274929, at *2, citing *Sexter v Kimmelman, Sexter, Warmflash & Leitner*, 19 AD3d 298, 299 [1st Dept 2005]). After all, as discussed, literally one paragraph earlier on the same page Borukhin's expert conceded that expenses that are not documented should not be credited. Here too, in the words of Borukhin's own expert, there is "insufficient accounting evidence to substantiate this claimed expense." Thus, half of this amount

($64,362.50) must be added to plaintiff's share, thereby increasing the total amount owed to $336,860.12.[3]

For the avoidance of doubt, to the extent Borukhin proffers his and Zaytseva's testimony to substantiate expenses not supported with documentation cited in the Accounting, even assuming such testimony was potentially legally sufficient, the court does not find it credible. As noted, their testimony largely lacked credibility and cannot be trusted where it is not supported by documentation timely provided with the Accounting.

The court also rejects Borukhin's argument that since "B2B's Contract Manager was contributed for the development of the B2C Software to be used in Cyan's business" that half of its purported value of $694,910 (50% of $1,389,820) should be treated "as a loan from Borukhin to Cyan, thereby eliminating all the funds which would have been available for distribution" (Dkt. 292 at 27). This is addressed in the Accounting (*see* Dkt. 189 at 13). The court is unpersuaded by the methodology supporting this assertion. Even assuming this is the amount that it cost to develop the Contract Manager that does not mean the full amount should be viewed as a capital contribution to Cyan. Cyan does not own this software but it benefitted from its use. MB otherwise retained the right to this software; thus, the full amount Borukhin contributed to MB should not be considered the value of what he contributed to Cyan. While the court might have considered a credit for the reasonable value of this benefit (e.g., a license fee) if a credible methodology supporting one was provided, the court is unpersuaded that Borukhin is personally entitled to a credit for this full amount. After all, MB provided the benefit; not Borukhin personally. There is no persuasive justification for giving Borukhin a credit for value he contributed to his other business that was then used to benefit Cyan. The 75-25 allocation suggested in the Accounting (*see* Dkt. 198 at 13) is arbitrary and comes across as a post-hoc rationale for ensuring that any amount owed to plaintiff should be completely offset.

There also is no basis for the assertion that "as a direct result of Silverstein's abandonment of Cyan, preventing it from going into business, Silverstein should pay damages to Borukhin in the amount of Borukhin's original investment of $489,191" (*see* Dkt. 292 at 28). Borukhin does not cite any authority for this assertion (*see id.*). As noted, there was some recoupment of the parties' investments based on the Tinkoff transactions even if the parties' business venture did not go as planned. Regardless, any claim that the value of Borukhin's pro rata interest in Cyan was diminished by virtue of plaintiff's actions is derivative in nature and Borukhin does not seek a derivative recovery or explain why there is a legal basis for a direct one (*Serino v Lipper*, 123 AD3d 34, 41 [1st Dept 2014]; *see Mohinani*, 208 AD3d at 405). This unsupported one-line claim at the end of Borukhin's brief is rejected.

[3] Plaintiff avers that pre-judgment interest should accrue "from the date Borukhin first refused to distribute the funds" (Dkt. 293 at 10). Plaintiff's briefs do not provide those dates (*see also* Dkt. 289 at 23). Nor is that date provided in plaintiff's direct testimony (*see* Dkt. 254 at 15). Interest will therefore accrue from the commencement of this action (*see Delulio v 320-57 Corp.*, 99 AD2d 253, 255 [1st Dept 1984]).

Remaining Issues

The issues on which plaintiff has prevailed do not support an award of punitive damages. If plaintiff had proven damages on his misappropriation claim, a punitive damages award might have been justified in light of the parties' fiduciary relationship (*see Hall v Middleton*, 227 AD3d 590, 591 [1st Dept 2024]). However, the adjustments to plaintiff's distribution calculation are merely based on a failure to properly submit corroborating documentation. While serious, these breaches are not sufficiently egregious to warrant punitive damages (*see DPB Family*, 2024 WL 2274929, at *5; *see also Young Adult Inst., Inc. v Corp. Source, Inc.*, 236 AD3d 483, 485 [1st Dept 2025]).

Based on how the parties charted their course only a direct recovery is awarded to plaintiff. While any recovery on plaintiff's derivative claims would have warranted a fee award payable by Cyan for creating a corporate benefit (*see Glenn v Hoteltron Sys., Inc.*, 74 NY2d 386, 393 [1989]), the Accounting avers that any amounts owed should be construed as a direct right to distributions, and plaintiff himself has requested direct recovery of these amounts. Thus, while plaintiff is the prevailing party, he has only created a personal benefit. Absent a corporate benefit he cannot recover fees from Cyan (*see Board of Managers of 28 Cliff St. Condo. v Maguire*, 191 AD3d 25, 34 [1st Dept 2020]).

There also is no basis for Borukhin to seek any indemnification from Cyan. Even assuming Borukhin had a statutory or contractual basis for indemnification, his serious misconduct precludes it (LLC Law § 420; *see TIC Holdings, LLC v HR Software Acquisitions Group, Inc.*, 301 AD2d 414, 415 [1st Dept 2003]). While he is fortunate to not be held liable for much more significant damages due to plaintiff's failure of proof, given Borukhin's clear fiduciary breaches and improper withholding of distributions he is not entitled to indemnification. Likewise, plaintiff's claims are certainly not frivolous; thus, fees under 22 NYCRR 130-1.1 are unwarranted.

Accordingly, it is ORDERED that the Clerk is directed to enter judgment in favor of plaintiff Yehudah Silverstein and against defendant Eric Borukhin in the amount of $336,860.12, plus 9% pre-judgment interest from January 20, 2021 until judgment is entered.

Plaintiff shall e-file a proposed judgment to the Clerk consistent with this order.

DATE: 1/20/2026 **JENNIFER G. SCHECTER, JSC**

Check One: [X] **Case Disposed** [ ] **Non-Final Disposition**