**Zabit v Brandometry, LLC**

2026 NY Slip Op 31781(U)

April 16, 2026

Supreme Court, New York County

Docket Number: Index No. 656563/2021

Judge: Emily Morales-Minerva

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

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WILLIAM ZABIT, BRANDTRANSACT WORLDWIDE, INC.,

Plaintiffs,

-v-

BRANDOMETRY, LLC,BRANDOMETRY GROUP, LLC,LARRY A. MEDIN, LAM ASSOCIATES, INC.,SUSAN AVARDE, TONY WENZEL, BRANDLOGIC CORP., COREBRAND ANALYTICS, LLC,COREBRAND DATA SCIENCE, TENET PARTNERS, HAMPTON BRIDWELL, JAMES GREGORY, TOROSO INVESTMENTS, LLC,MICHAEL VENUTO, ACSI FUNDS, EXPONENTIAL ETFS, PHIL BAK, CHARLES A RAGAUSS, EQM INDEXES, LLC,JANE EDMONDSON, FRANK ZARABI, BACON LAW GROUP, THOMAS C BACON

Defendants.

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**INDEX NO.** 656563/2021

**MOTION DATE** 03/10/2022

**MOTION SEQ. NO.** 003

**DECISION & ORDER ON MOTION**

The following e-filed documents, listed by NYSCEF document number (Motion 003) 44, 45, 46, 47, 48, 54, 64, 66, 68, 72, 76

were read on this motion to/for DISMISSAL.

APPEARANCES:

Alexander Edward Eisemann, Esq., 20 Vesey Street, New York, NY 10007, of counsel, for plaintiffs.

Amster, Rothstein & Eberstein, LLP, 405 Lexington Avenue, New York, NY 10174 (Charles Robert Macedo, Esq., of counsel), for defendant Frank Zarabi a/k/a Farhad M. Zarabi and Farhad Zarabi.

Barclay Damon, LLP, 1270 Avenue of the Americas, New York, NY 10020 (Michael James Case, Esq., of counsel), for defendants Brandlogic Corp., Corebrand Analytics, LLC, Corebrand Data Science, Tenet Partners and Hampton Bridwell.

Richman Law Firm, PLLC, 630 3rd Avenue, New York, NY 10017 (Scott Brandon Richman, Esq., and Stefan B. Kalina, Esq., of counsel), for defendants Brandometry, LLC f/k/a

Brandtransact Investments, LLC, Brandometry Group, LLC, Larry A. Medin, and Lam Associates, Inc.

Traub Lieberman Strauss & Shrewsberry, LLP, 445 Hamilton Avenue, White Plains, NY (Lisa L. Shrewsberry, Esq., of counsel), for defendants Thomas C Bacon and the Bacon Law Group.

EMILY MORALES-MINERVA, J.S.C.

In this motion (seq. no. 003), defendant FRANK ZARABI (Zarabi) moves to dismiss the complaint against him for lack of personal jurisdiction (see CPLR § 3211 [a] [8]). In the alternative, Zaribi moves to dismiss the complaint based on res judicata (see CPLR § 3211 [a] [5]), or for failure to state a cause of action against him (see CPLR § 3211 [a] [7]).

Plaintiffs WILLIAM ZABIT and BRANDTRANSACT WORLDWIDE, INC. do not oppose the motion to dismiss the following causes of action against Zarabi: (1) breach of confidence; (2) fraudulent misrepresentation; (3) tortious interference; (4) breach of contract; (5) theft/embezzlement; and (6) unfair trade practices causes of action (see New York State Courts Electronic Filing System [NYSCEF] Doc. No. 89, stipulation, dated September 06, 2024, at ¶ 1 [withdrawing certain listed claims]; see also NYSCEF Doc. No. 66, plaintiffs' opposition to motion to dismiss, p 2 ["plaintiffs do not oppose the motions to dismiss Counts II (Theft/Embezzlement), VIII (Fraudulent Misrepresentation), and XIV (Unfair Trade Practices)"]).

Plaintiffs otherwise oppose the motion to dismiss their remaining causes of action against Zaribi. These causes of action are as follows:(1) misappropriation of trade secrets; (2) fraud; (3) aiding and abetting fraud; (4) fraudulent inducement; (5) fraudulent concealment; (6) breach of fiduciary duty; (7) aiding and abetting breach of fiduciary duty; (8) unjust enrichment; (9) unfair competition; (10) aiding and abetting breach of attorney-client special relationship; (11) civil conspiracy; and (12) declaratory judgment and equitable relief.

As set forth below, the Court declines to dismiss the complaint on the preliminary issue of personal jurisdiction, and dismisses the complaint against Zaribi for failure to state a cause of action.

CPLR § 3211 (a) (8)
LONG-ARM JURISDICTION

"A party may move for judgment dismissing one or more causes of action asserted against [them] on the ground that: ... the court has not jurisdiction of the person of the defendant" (CPLR § 3211 (a) (8)]. Where a nondomiciliary moves for dismissal on this ground, the burden rests on the plaintiff to present sufficient evidence to prove that New York's long-arm statute confers jurisdiction over the non-domiciliary (see Bangladesh Bank v Rizal Commercial Banking Corp., 226 AD3d 60,

74 [1st Dept 2024]; see also Copp v Ramirez, 62 AD3d 23, 28 [1st Dept 2009], lv denied 12 NY3d 711 [2009]).

The long-arm statute provides, as relied upon by the plaintiff, that "a court may exercise personal jurisdiction over any non-domiciliary . . . who in person or through an agent . . . transacts any business within the state or contracts anywhere to supply . . . services in the state" (CPLR § 302 [a] [1]) or "commits a tortious act within the state" (CPLR § 302 [a] [2]).

In considering if a non-domiciliary "transacts any business" in this state, courts must assess a defendant's actions in New York to determine if those activities were purposeful (State of New York v Vayu, 39 NY3d 330, 332 [2023] [Garcia, J.]). "Purposeful activities" are "volitional acts by which [a] non-domiciliary avails itself of the privilege of conducting activities within the forum State, . . . invoking the benefits and protections of its laws" (id., [quotations and citation omitted]). The key consideration in determining if an activity is purposeful "is the quality of the non-domiciliary's New York contacts" (D&R Global Selections, S.L. v Bodega Olegario Falcon Pineiro, 29 NY3d 292, 298 [2017] [Rivera, J.]; see also Vayu, supra, 39 NY3d at 333 ["determining what facts constitute purposeful availment is an objective inquiry (that) always requires a court to closely examine the defendant's

contacts for their quality"] [quotations and citations omitted]).

"[B]eing physically present [or having been physically present] in New York is not required" to establish long-arm jurisdiction" (Vayu, 39 NY3d at 334). Indeed, it is well-settled "particularly in this day of instant long-range communications, one can engage in extensive purposeful activity here without ever actually setting foot in the State" (Parke-Bernet Galleries, Inc. v Franklyn, 26 NY2d 13, 17 [1970], citing International Shoe Co. v Washington, 326 US 310, 316-317 [1945] [California defendant who participated in a live auction held in New York via telephone was subject to jurisdiction under CPLR § 302 (a) (1) in an action arising out of that auction]; see also Fischbarg v Doucet, 9 NY3d 375 [2007] [California defendants "transacted business" in New York where they formed an attorney-client relationship with plaintiff attorney here through numerous telephone calls, faxes, mail contacts, and e-mails]).

Thus, "[l]ong-arm jurisdiction is appropriately exercised over commercial actors who have . . . us[ed] electronic and telephonic means to project themselves into New York to conduct business transactions" (Vayu, supra, 39 NY3d at 334 [finding a defendant projected itself into New York through calls and e-mails seeking to establish a substantial ongoing relationship

with an entity here]). Further, the initiator of the contact -- plaintiff or non-domiciliary -- is not dispositive to the exercise of long-arm jurisdiction (id.).

Along with finding that a non-domiciliary transacted business in New York, for long-arm jurisdiction to reach a non-domiciliary, there must be an "'articulable nexus'" or "'substantial nexus'" between the defendant's transaction and the plaintiff's cause of action (D&R Global, supra, 29 NY3d at 298-299, quoting Licci v Lebanese Can. Bank, SAL, 20 NY3d 327, 339 [2012]). "This inquiry is relatively permissive and [such nexus or relationship] exists where . . . one element arises from the New York contacts rather than every element of the cause of action pleaded" (id. [emphasis added] [quotations and citation omitted]).

Finally, "[e]xercise of personal jurisdiction under [the long-arm statute] must also comport with federal due process" (D&R Global, 29 NY3d at 299). This means the non-domiciliary defendant must "have minimum contacts with the forum state such that the defendant should reasonably anticipate being haled into court there" (id., 29 NY3d at 300 [quotations and citations omitted]).

Here, it is undisputed that Zarabi resides in California and maintains an office there. It is also undisputed that defendant Zarabi entered into two agreements with the original

members of defendant BRANDOMETRY GROUP LLC f/k/a BRANDTRANSACT INVESTMENTS, LLC (BTI) to restructure BTI. Thereby, effective March 27, 2017, Zarabi obtained 54% membership in BTI whose principal office and business is conducted from 48 Wall Street, Suite 1100, New York, NY 10005. Further, the restructuring of BTI, pursuant to these agreements, lies at the heart of the present dispute. Therefore, this Court may exercise personal jurisdiction over Zarabi.

The Court next considers Zarabi's alternative argument that plaintiffs' causes of action against him are barred by claim preclusion.

RES JUDICATA

A party may move to dismiss a cause of action asserted against them on the ground that "the cause of action may not be maintained because of . . . res judicata" (CPLR § 3211 [a] [5]). "'Under res judicata, or claim preclusion, a valid final judgment bars future actions between the same parties on the same cause of action'" (Simmons v Trans Express Inc., 37 NY3d 107, 111 [2021], quoting Parker v Blauvelt Volunteer Fire Co., 93 NY2d 343, 347 [1999], citing Matter of Reilly v Reid, 45 NY2d 24, 28 [1978]). Further, "once a claim is brought to a final conclusion, all other claims arising out of the same transaction

or series of transactions are barred, even if based upon different theories or if seeking a different remedy" (id. [emphasis in original], quoting O'Brien v City of Syracuse, 54 NY2d 353, 357 [1981]).

Under this transactional analysis, if a provision in the judgment dismisses a party's claim "without prejudice," the claim is saved from preclusion (see City of New York v Caristo Constr. Corp., 62 NY2d 819, 820 [1984]). Indeed, the phrase "'without prejudice' literally and precisely means that the judgment in the first action shall not prejudice, i.e., bar, the later action" (McMahon v New York, 105 AD2d 101, 105 [1st Dept 1984] [internal citation omitted]; see also Stiles v Graves, 143 AD3d 1215, 1216 [3d Dept 2016] [a court denies parties finality "when it dismisses an action without prejudice; such a determination permits a plaintiff to relitigate an identical claim to that which has been dismissed"] [internal citations omitted]).

Here, Zarabi unavailingly argues that the opinion and order of the United States District Court for the Southern District of New York (Cronan, J.) in Zabit and Brandtransact Worldwide, Inc. v Brandometry, LLC, et al. (20 Civ. 555 Opinion and Order, 20 Civ. 555 [SDNY 2021]) bars the present action. There, plaintiffs commenced a federal claim, pursuant to the Defend Trade Secrets Act (DTSA) (18 USC § 1836 [b]) and New York State

law, against defendants, including Zarabi (NYSCEF Doc. No. 46, Zabit and Brandtransact Worldwide, Inc. v Brandometry, LLC, et al., 20 Civ. 555 Opinion and Order, 20 Civ. 555 [SDNY 2021]). In the federal action, as here, plaintiffs accused defendants "of conspiring to steal 'their groundbreaking stock-index concept' and 'strip [Zabit's] ownership in the company that was created to market financial products around th[at] index" (NYSCEF Doc. No. 46, Zabit and Brandtransact Worldwide, Inc. v Brandometry, LLC, et al., 20 Civ. 555 Opinion and Order, 20 Civ. 555 [SDNY 2021], at 1).

Zarabi, among other defendants, moved to dismiss the action before the Southern District of New York. The District Court (Cronan, J.) granted all motions to dismiss plaintiffs' federal DTSA claims "with prejudice", but "decline[d] to exercise supplemental jurisdiction over the remaining state law claims, which [the District Court] dismissed without prejudice" (id. at 2 [emphasis added], and at 24 ["The Court declines to exercise supplemental jurisdiction over Plaintiff's state-law claims and dismisses those claims without prejudice"]). Accordingly, res judicata does not preclude the state-law claims from being asserted here.

The Court now turns to Zarabi's second alternative argument that the complaint fails to state a cause of action against him.

CPLR § 3211 (a) (7)
FAILURE TO STATE A CAUSE OF ACTION

"On a CPLR § 3211 (a)(7) motion to dismiss for failure to state a cause of action, the complaint must be construed in the light most favorable to the plaintiff and all factual allegations must be accepted as true" (Alden Glob. Value Recovery Master Fund, L.P. v KeyBank N.A., 159 AD3d 618, 621-622 [1st Dept 2018], citing 219 Broadway Corp. v Alexander's, Inc., 46 NY2d 506, 509 [1979]). Further, on such a motion, the complaint is to be construed liberally, and all reasonable inferences must be drawn in favor of the plaintiff (see Leon v Martinez, 84 NY2d 83, 87 [1994]). "Whatever an ultimate trial may disclose as to the truth of the allegations," the court shall "take them as true and resolve all inferences which reasonably flow therefrom in favor of the pleader" (Sander v Winship, 57 NY2d 391, 394 [1982]).

In this action, the causes of action plaintiffs assert against Zarabi, after withdrawal and no opposition to dismissal, are: (1) misappropriation of trade secrets; (2) fraud; (3) aiding and abetting fraud; (4) fraudulent inducement; (5) fraudulent concealment; (6) breach of fiduciary duty; (7) aiding and abetting breach of fiduciary duty; (8) unjust enrichment; (9) unfair competition; (10) aiding and abetting breach of

attorney-client special relationship; (11) civil conspiracy; and (12) declaratory judgment and equitable relief.

The Court addresses the motion to dismiss as to each of these claims below.

*Misappropriation of Trade Secrets*

To assert a claim for misappropriation of a trade secret, a plaintiff must make a showing that "(1) it possessed a trade secret, and (2) defendant is using that trade secret in breach of an agreement, confidence, or duty, or as a result of discovery by improper means" (E.J. Brooks Co. v Cambridge Sec. Seals, 31 NY3d 441, 452 [2018] [internal citation omitted]; see also Schroeder v Pinterest Inc., 133 AD3d 12, 27 [1st Dept 2015] [quotation and citations omitted]).

"A trade secret is any formula, pattern, device or compilation of information which is used in one's business, and which gives one an opportunity to obtain an advantage over competitors who do not know or use it" (Colgate Inn, LLC v Eberhardt, LLC, 206 AD3d 1197, 1203 [3d Dept 2022], quoting E.J. Brooks Co., 31 NY3d at 453 [internal quotation marks, brackets and citation omitted]). "An essential prerequisite to legal protection against the misappropriation of a trade secret is the

element of secrecy" (id. [emphasis added] [internal quotation marks and citations omitted]).

"Some of the factors to be considered in evaluating a claim of trade secret status include: (1) the extent to which the information is known outside of [the] business; (2) the extent to which it is known by employees and others involved in [the] business; (3) the extent of measures taken by [the business] to guard the secrecy of the information; (4) the value of the information to [the business] and [its] competitors; (5) the amount of effort or money expended by [the business] in developing the information; [and] (6) the ease or difficulty with which the information could be properly acquired or duplicated by others" (Women's Cancer Care Assoc., LLC v. Godoy, 2022 N.Y. Misc. LEXIS 7170, *26-27 [Sup Ct Albany Cnty 2022], citing Restatement of Torts § 757, Comment b).

Here, plaintiffs allege that, among other defendants, Zarabi acquired a computational method known as the Brandtransact 50 Index (BTW50 Index), which was plaintiff Zabit's "brilliant idea" and which plaintiff Brandtransact Worldwide, Inc. (BTWW) "refin[ed] . . . into a marketable reality" (NYSCEF Doc. No. 01, summons and complaint, ¶ 2). However, the complaint is devoid of any element of secrecy surrounding this algorithm (see generally Colgate Inn, LLC, 206 AD3d at 1203 ["an essential prerequisite to legal protection

against the misappropriation of a trade secret is the element of secrecy"]).

Indeed, the complaint, on its face, appears to defeat the notion of secretiveness. Plaintiffs allege that Zabit shared his idea for the "proprietary" algorithm with a company to develop it and that company, plaintiff BTWW, spent five years creating the Index. At no point in setting forth this background do plaintiffs allege any facts demonstrating "the extent of measures [if any] taken to guard the secrecy of the information" relating to plaintiff's idea or encompassing the algorithm once realized (see Restatement of Torts § 757, Comment b).

Plaintiffs additionally allege that, after the idea went from Zabit to BTWW without any apparent secrecy, Zabit shared the idea and BTW50 Index/algorithm with defendant Larry A. Medin (Medin), as an individual (NYSCEF Doc. No. 001, ¶ 3 [plaintiff "ZABIT hired defendant Larry Medin" and, together, they "formed BTI [BrandTransact Investments]" for the purpose of "developing and . . . marketing financial products based on the BTW50 Index"]). The stated facts are that Zabit and Medin then established BrandTransact Investments (BTI) to build on the BTW50 Index and operationalize products based on it; this included "the Brand Value Exchange Traded Fund on the New York

Stock Exchange" which tracked the BTW50 Index and BTI launched on the New York Stock Exchange (id., ¶ 34).

These factual allegations, even considered in the requisite light most favorable to plaintiffs, reflect no careful preservation of a trade secret, but unguarded dissemination of plaintiff Zabit's idea and the resulting BTW50 Index. Therefore, the Court finds plaintiffs failed to set forth a cause of action against Zarabi for misappropriation of a trade secret.

*Fraud, Aiding and Abetting Fraud, Fraudulent Inducement, and Fraudulent Concealment*

"The elements of a cause of action for fraud require a material misrepresentation of a fact, knowledge of its falsity, intent to induce reliance, justifiable reliance by the plaintiff[,] and damages" (Carlson v American Intl. Group, Inc., 30 NY3d 288, 310 [2017], quoting Eurycleia Partners, LP v Seward & Kissel, LLP, 12 NY3d 553, 559 [2009]; see also Lama Holding Co. v Smith Barney, 88 NY2d 413, 421 [1996]). In an action for fraud, "the circumstances constituting the wrong shall be stated in detail" (Carlson, supra, 30 NY3d at 310, quoting CPLR § 3016 [b] [governing "[p]articularity in specific actions"]).

To properly plead "a claim for aiding and abetting fraud, the complaint must allege: (1) the existence of an underlying

fraud; (2) knowledge of this fraud on the part of the aider and abettor; and (3) substantial assistance by the aider and abettor in achievement of the fraud" (Stanfield Offshore Leveraged Assets, Ltd. v Metro. Life Ins. Co., 64 AD3d 472, 476 [1st Dept 2009] [quotations and citations omitted] lv denied 13 NY3d 709 [2009]; see generally Owens v New Empire Corp., 244 AD3d 454, 457 [1st Dept 2025] [citing Stanfield as authority for the elements for fraud and aiding and abetting fraudulent misrepresentation]). Further, the plaintiff must "adequately plead that defendants had actual knowledge of the fraud, or that they provided substantial assistance in the fraud's commission" (Lumen at White Plains, LLC v Stern, 135 AD3d 600, 600 [1st Dept 2016], citing Stanfield, supra, 64 AD3d at 476]).

"To state a claim for fraudulent inducement, there must be a knowing misrepresentation of material present fact, which is intended to deceive another party and induce that party to act on it, resulting in injury" (Gosmile, Inc. v Levine, 81 AD3d 77, 81 [1st Dept 2010]; see Gateway Intl., 360, LLC v Richmond Capital Group, LLC, 201 AD3d 406, 408 [1st Dept 2022]). A fraudulent inducement claim requires a showing that a defendant made a false representation for the purpose of inducing another to act on it (see EVUNP Holdings LLC v Dman, 225 AD3d 469 [1st Dept 2024]).

"The elements of a fraudulent concealment claim [are] concealment of a material fact which defendant was duty-bound to disclose, scienter, justifiable reliance, and injury" (Mitschele v Schultz, 36 AD3d 249, 254-255 [1st Dept 2006]; see also P.T. Bank Central Asia v ABN AMRO Bank N.V., 301 AD2d 373, 376 [1st Dept 2003] [holding that a cause of action for fraudulent concealment requires, in addition to the elements for fraud, "an allegation that the defendant had a duty to disclose material information and that it failed to do so"]).

Here, plaintiffs fail to meet the heightened pleading requirements of fraud (see CPLR § 3016 [b] ["the circumstances constituting the wrong shall be stated in detail"]). The complaint contains no particularized factual allegations supporting an inference that Zarabi (1) had actual knowledge of any misrepresentation or fraudulent scheme; that Zarabi (2) provided substantial assistance in the commission of any fraud; that Zarabi (3) made a false misrepresentation to plaintiffs for the purpose of inducing plaintiffs to act on it; or that Zarabi (4) was duty-bound to disclose material information to plaintiffs, and failed to do so.

Instead, plaintiffs contend that Zarabi "posed as an investor" at the direction of Medin in order to participate in the "conspiracy" to steal BTI from Zabit (see NYSCEF Doc. No. 01, complaint, p 3, 19, 50). In other words, according to

plaintiffs, Zarabi did not really want to purchase 54% of BTI, but did so only to assist in the "takeover plot, fraudulently concocted by Medin" (id., at p 57, 59). This is a conclusory narrative, not a factual allegation. Stripped of its rhetoric, the complaint alleges motive without mechanism and without reasonable inference. It offers no facts describing how or why the alleged plan to divert control was conceived or executed, especially when the undisputed facts are that, prior to Zarabi's purchase, Zabit owned 54% of BTI and Medin owned 46% and, after the sale, both lost significant ownership percentage to Zarabi.

*Breach of Fiduciary Duty, and Aiding and Abetting Breach of Fiduciary Duty*

"The elements of a cause of action to recover damages for breach of fiduciary duty are (1) the existence of a fiduciary relationship, (2) misconduct by the defendant, and (3) damages directly caused by the defendant's misconduct" (Baldeo v Majeed, 150 AD3d 942, 945 [2d Dept 2017], citing Deblinger v Sani-Pine Prods. Co., Inc., 107 AD3d 659, 660 [2d Dept 2013] and Rut v Young Adult Inst., Inc., 74 AD3d 776, 777 [2d Dept 2010]).

"A claim for aiding and abetting a breach of fiduciary duty requires: (1) [that a fiduciary breach its] 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" (Baldeo, 150 AD3d at 946 [quotations and citations omitted]). Further, "a plaintiff must plead this cause of action with particularity; conclusory allegations are insufficient" (Schroeder, 133 AD3d at 25, quoting Front, Inc v Khalil, 103 AD3d 481 [1st Dept 2013]).

Here, the pleadings are devoid of any factual allegations from which it may be reasonably inferred that a fiduciary relationship existed between Zarabi and plaintiffs prior to Zarabi purchasing 54% shares in BTI. In any event, there are no facts to support the idea that Zarabi's purchase of shares constituted misconduct or the idea that Zarabi participated in a scheme to take the company from Zabit.

The facts alleged are that Zabit knew that, by contributing $900,000.00 in capital, Zarabi would become majority owner of BTI and that Zabit would be losing significant control of BTI and the index. There is only conclusory statements that Zarabi intended to act as a passive investor and not transfer or share control of BTI and the index, and no doubt that, alleged scheme or not, Zarabi agreed to sell his shares and give up majority control of BTI.

With respect to aiding and abetting a breach of fiduciary duty, plaintiffs similarly fail to allege facts demonstrating that Zarabi knowingly induced or participated in any alleged

breach by Medin. The complaint contains only conclusory allegations that Zarabi was involved in a "scheme" or "takeover plot" with Medin, without any particularized allegations identifying the nature of his alleged participation or his knowledge of any fiduciary breach (see Schroeder, 133 AD3d at 25 [dismissing cause of action for aiding and abetting a breach of fiduciary duty where "plaintiffs failed to assert with the requisite particularity facts alleging that [defendant Pinterest] had actual knowledge of [defendant Cohen's] alleged breach and knowingly participated in it"]). Therefore, the Court is compelled to dismiss these causes of action against Zarabi.

*Unjust Enrichment*

To state a claim for unjust enrichment, a plaintiff must show "that (1) the other party was enriched, (2) at that party's expense and (3) that it is against equity and good conscience to permit [the other party] to retain what is sought to be recovered" (Mandarin Trading Ltd. v Wildenstein, 16 NY3d 173, 182 [2011] [internal quotation marks omitted]). In order for an unjust enrichment claim to be viable, plaintiff must identify "what benefit was conferred on defendants" (Woods v 126 Riverside Dr. Corp., 64 AD3d 422, 424 [1st Dept 2009]).

Plaintiffs fail to allege any non-conclusory facts demonstrating that Zarabi was enriched at plaintiffs' expense. Although the complaint contains a lengthy narrative, it is devoid of allegations that Zarabi, individually, received any benefit, let alone one at plaintiffs' expense (see Woods, 64 AD3d at 424). While Zabit paints any loss of BTI as solely his own, this characterization appears untethered to any pleaded facts.

*Unfair Competition*

"It is well settled that 'the primary concern in unfair competition is the protection of a business from another's misappropriation of the business, organization [or its] expenditure of labor, skill, and money" (Macys Inc. v Martha Stewart Living Omnimedia, Inc., 127 AD3d 48, 56 [1st Dept 2015], quoting Ruder & Finn v Seaboard Sur. Co., 52 NY2d 663, 671 [1981]). A plaintiff asserting an unfair competition claim must allege "the bad faith misappropriation of a commercial advantage which belonged exclusively to" the plaintiff (Valkyrie AI LLC v PriceWaterhouseCoopers LLP, 233 AD3d 460 [1st Dept 2024], quoting Brook v Peconic Bay Med. Ctr., 152 AD3d 436, 439 [1st Dept 2017]). "[B]ad faith can be established by a showing of fraud, deception, or an abuse of a fiduciary or confidential relationship" (Schroeder, 133 AD3d at 30).

Here, among other things, plaintiffs do not allege that Zarabi, individually, misappropriated a commercial advantage belonging to them (see generally NYSCEF Doc. No. 01, complaint). Accordingly, this cause of action against Zarabi shall be dismissed.

Plaintiffs also argue unavailingly that they have set forth a claim against Zarabi for unfair competition under the theory of "accessorial liability" (see NYSCEF Doc. No. 66, plaintiffs' opposition, p 40). In support, plaintiffs cite generally to Restatement (Second) of Torts § 876[1] and In re Methyl Tertiary Butyl Ether Prod. Liab. Litig., 175 F Supp 2d 593 (SDNY 2001), which addresses contributing tortfeasors as people acting in concert.

Methyl involved, among other things, the distinguishable threshold question whether plaintiffs could rely on the theory of concert of action to hold defendants jointly and severally liable without identifying the defendant or defendants that manufactured a contaminant that contaminated plaintiffs' wells

[1]Restatement (Second) of Torts § 876: "For harm resulting to a third person from the tortious conduct of another, one is subject to liability if he (a) does a tortious act in concert with the other or pursuant to a common design with him, or (b) knows that the other's conduct constitutes a breach of duty and gives substantial assistance or encouragement to the other so to conduct himself, or (c) gives substantial assistance to the other in accomplishing a tortious result and his own conduct, separately considered, constitutes a breach of duty to the third person."

(see Methyl, 175 F Supp 2d at 632). In answering in the affirmative, the District Court noted that "the concert of action theory permits a defendant to be held jointly and severally liable if it commits a tortious act in concert with another or pursuant to a common design, or a defendant gives substantial assistance to another knowing that the other's conduct constitutes a breach of duty" (id. [emphasis added]). Applying this standard, the District Court held the plaintiffs set forth sufficient facts that, if taken as true, would establish that the defendants committed tortious acts, pursuant to an understanding and common plan (id. at 632-633).

The same cannot be said here. Plaintiffs' allegations that Zarabi acted in concert with other defendants in engaging in any unfair competition is purely conclusory. Plaintiffs' contentions that Zarabi assisted other defendants knowing they intended to breach any duty to plaintiffs is also barely stated.

*Aiding and Abetting Breach of Attorney-Client Special Relationship*

With respect to this cause of action, plaintiffs argue that defendants BACON LAW GROUP (law firm) and THOMAS C. BACON (attorney) "had help in breaching their responsibilities to [plaintiff] Zabit [and] [t]he breach could not have been

performed but for the assistance of Medin and Zarabi" (NYSCEF Doc. No. 66, plaintiffs' opposition to motion to dismiss, p 45).

However, law firm and attorney were counsel to defendant BRANDTRANSACT INVESTMENTS, LLC (BTI) not counsel to plaintiff Zabit, individually, or plaintiff BTWW (NYSCEF Doc. No. 01, Summons and Complaint, ¶ 44 ["Bacon Law Group was retained by BTI to create various LLC agreements, amendments and contracts"]; see also NYSCEF Doc. No. 09, exhibit F to summons and complaint, Engagement for Legal Services between BTI and Thomas C. Bacon and Bacon Law Group, ¶ 1 [**"Our client(s): terms of engagement as well as of existing and future engagements.** This Agreement governs our (law firm and attorney's) representation of you (BTI) and not of any other party, including any of your parent, subsidiary, affiliate or related persons . . . unless such party is named in the preceding paragraph" which only names BTI] [emphasis in original]; NYSCEF Doc. No. 28, plaintiffs' opposition to motion to dismiss, p 19 ["Zabit agrees he was never in direct privity with Bacon Law Group or Bacon himself . . ."]).

*Civil Conspiracy*

"Although New York does not recognize an independent cause of action for civil conspiracy, allegations of civil conspiracy

are permitted 'to connect the actions of separate defendants with an otherwise actionable tort'" (Cohen Bros. Realty Corp. v Mapes, 181 AD3d 401, 404 [1st Dept 2020], quoting Alexander & Alexander of N.Y. v Fritzen, 68 NY2d 968, 969 [1986] ["a mere conspiracy to commit a (tort) is never of itself a cause of action"). "To establish a claim of civil conspiracy, the plaintiff must demonstrate the primary tort, plus the following four elements: an agreement between two or more parties; an overt act in furtherance of the agreement; the parties' intentional participation in the furtherance of a plan or purpose; and resulting damage or injury" (id.).

Here, the facts alleged do not permit a reasonable inference that Zarabi knew of any agreement or alleged plan of the other defendants to commit a tortious act against plaintiffs, or that Zarabi intentionally participated in the furtherance of an alleged plan or purpose (see NYSCEF Doc. No. 01, complaint, p 19 [plaintiffs, in one example, allege in a conclusory fashion that all of the defendants participated in a conspiracy to help "defendant Medin misrepresent the nature of Zarabi's investment"]. Although the complaint contains repeated references to Zarabi, such allegations are conclusory.

*Declaratory Judgment and Equitable Relief*

In this cause of action, plaintiffs request that the Court "enter a judgment declaring that [plaintiffs] are the sole and exclusive owners and licensees of the BTW50 Index and its underlying algorithms" (NYSCEF Doc. No. 01, complaint, p 93). Plaintiffs further request that the Court "permanently enjoin defendants from using the BTW50 Index, its underlying algorithms and the EQM Index and from representing that any of these items are owned by them" (id., p 93-94).

"[I]njunctive relief is simply not available when the plaintiff does not have any remaining substantive causes of action against [] defendant" (Weinreb v 37 Apt. Corp., 97 AD3d 54, 58-59 [1st Dept 2012]). "An injunction is a remedy, a form of relief that may be granted when its proponent establishes the merits of its substantive cause of action against that defendant" (Hejailan-Amon v Amon, 160 AD3d 481, 483 [1st Dept 2018] [citation omitted]; Talking Capital LLC v Omanoff, 169 AD3d 423, 424 [1st Dept 2019] [holding that injunctive relief "is a remedy for an underlying wrong, not a cause of action"]).

Here, there are no remaining substantive claims interposed against Zarabi. Therefore, plaintiffs' claim for injunctive relief cannot be maintained.

For similar reasons, plaintiffs' cause of action for declaratory judgment cannot be maintained. Pursuant to CPLR § 3001, "[t]he supreme court may render a declaratory judgment having the effect of a final judgment as to the rights and other legal relations of the parties to a justiciable controversy whether or not further relief is or could be claimed." A declaratory judgment is an equitable remedy that is generally only available where there is no adequate remedy at law (see Boyle v Kelley, 42 NY2d 88, 91 [1977]), and is intended to "declare the respective legal rights of the parties based on a given set of facts, not to declare findings of fact" (Touro Coll. v Novus Univ. Corp., 146 AD3d 679, 679 [1st Dept 2017]).

"A declaratory judgment requires a 'justiciable controversy,' in which not only does the plaintiff 'have an interest sufficient to constitute standing to maintain the action,' but also that the controversy involve present, rather than hypothetical, contingent, or remote prejudice to plaintiff" (id., quoting American Ins. Assn. v Chu, 64 NY2d 379, 383, cert. denied 474 US 803 [1985]). "Stated differently, the general purpose of a declaratory judgment is to quiet or stabilize an uncertain or disputed jural relationship concerning present or prospective obligations" (Pappas v B&G Holding Co., 83 Misc3d 1285[A], *3 [Sup Ct Bx Cnty 2024], citing James v Alderton Dock Yards, 256 NY 298, 305 [1931]).

Here, plaintiffs fail to allege a justiciable controversy. While the complaint seeks a declaration concerning the ownership of the "BTW50 Index and related algorithms", plaintiffs do not allege facts demonstrating a present, concrete dispute between plaintiffs and Zarabi with respect to those ownership rights (see Touro Coll. v Novus Univ. Corp., 146 AD3d at 679). Rather, the complaint contains a generalized narrative that fails to link any claimed ownership interest or adverse conduct to Zarabi specifically.

Accordingly, it is hereby

ORDERED that the breach of confidence, fraudulent misrepresentation, tortious interference, and breach of contract causes of action asserted against defendant FRANK ZARABI are dismissed, as withdrawn; it is further

ORDERED that the theft/embezzlement and unfair trade practices causes of action asserted against defendant FRANK ZARABI are dismissed, without opposition; it is further

ORDERED that the misappropriation of trade secrets, fraud, aiding or abetting fraud, fraudulent inducement, fraudulent concealment, breach of fiduciary duty, aiding and abetting breach of fiduciary duty, unjust enrichment, unfair competition, aiding and abetting breach of attorney-client special relationship, civil conspiracy, and declaratory judgment and equitable relief causes of action asserted against defendant

FRANK ZARABI are dismissed pursuant to CPLR § 3211 (a) (7) for failure to state a cause of action; it is further

ORDERED that the complaint against defendant FRANK ZARABI is dismissed in its entirety; it is further

ORDERED that defendant FRANK ZARABI shall serve this order with notice of entry on plaintiffs and remaining parties within 15 days of entry of this order; and it is further

ORDERED that the Clerk of the Court shall mark the file accordingly.

THIS CONSTITUTES THE DECISION AND ORDER OF THE COURT.

Emily Morales-Minerva

04/16/2026
DATE

EMILY MORALES-MINERVA, J.S.C.

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| CHECK ONE: | | CASE DISPOSED | | | X | NON-FINAL DISPOSITION | |
| | X | GRANTED | | DENIED | | GRANTED IN PART | OTHER |
| APPLICATION: | | SETTLE ORDER | | | | SUBMIT ORDER | |
| CHECK IF APPROPRIATE: | | INCLUDES TRANSFER/REASSIGN | | | | FIDUCIARY APPOINTMENT | REFERENCE |