Zabit v Brandometry, LLC
2026 NY Slip Op 31801(U)
April 16, 2026
Supreme Court, New York County
Docket Number: Index No. 656563/2021
Judge: Emily Morales-Minerva
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SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK: PART 42M

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WILLIAM ZABIT, BRANDTRANSACT WORLDWIDE, INC.,

Plaintiff,

- 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 03/18/2022

MOTION SEQ. NO. 004

DECISION + ORDER ON MOTION

The following e-filed documents, listed by NYSCEF document number (Motion 004) 49, 50, 51, 52, 53, 70, 71, 73, 78, 88

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. 004), defendants BRANDOMETRY, LLC F/K/A BRANDTRANSACT INVESTMENTS, LLC (BTI), BRANDOMETRY GROUP, LLC (BG), LAM ASSOCIATES, INC. (LAM)[1] and LARRY A. MEDIN (Medin) move to dismiss the complaint for failure to state a cause of action against them (see CPLR § 3211 [a] [7]).

Plaintiffs WILLIAM ZABIT and BRANDTRANSACT WORLDWIDE, INC. do not oppose this motion to the extent it seeks dismissal of the following causes of action: theft/embezzlement, fraudulent misrepresentation, and unfair trade practices (see NYSCEF Doc. No. 66, plaintiffs' opposition to motion to dismiss, p 2 [confirming the same]). Plaintiffs oppose the motion in all remaining parts.

For the reasons that follow, the Court grants this motion to dismiss the complaint against LAM and BG as an impermissible group pleading and grants the motion as to the remaining defendants for failure to state a cause of action.

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[1] Defendant LARRY A. MEDIN (Medin) is the CEO of BRANDOMETRY, LLC, which was formerly known as BRANDTRANSACT INVESTMENTS, LLC (BTI) (see NYSCEF Doc. No. 01, complaint, p 10). Defendant BRANDOMETRY GROUP LLC (BG) "is, upon information and belief, the alter ego of defendant [BTI]" (id.). Plaintiffs allege that Medin founded and owns defendant LAM ASSOCIATES, INC. (see id.).

Impermissible Group Pleading

CPLR § 3013 requires statements in a pleading to be "sufficiently particular to give the court and parties notice of the transactions, occurrences, or series of transactions or occurrences, intended to be proved and the material elements of each cause of action or defense." A complaint that fails to differentiate between the defendants is an improper group pleading (see Principia Partners LLC v Swap Fin. Group, 194 AD3d 584 [1st Dept 2021]; Aetna Cas. & Surety Co. v Merchants Mut. Ins. Co., 84 AD2d 736 [1st Dept 1981] [holding that a complaint which collectively refers to defendants without any precise conduct charged to a particular defendant fails to comport with CPLR § 3013]).

Here, aside from a brief description in the background section of the complaint (see NYSCEF Doc. No. 1, complaint, p 10), the complaint sets forth no specific conduct by defendant LAM ASSOCIATES, INC. (LAM). Further, plaintiffs credit every allegation pertaining to defendant BRANDOMETRY, LLC F/K/A BRANDTRANSACT INVESTMENTS, LLC (BTI) to defendant BRANDOMETRY GROUP, LLC (BG) merely because it is one of a list of defendants. While plaintiffs go a bit further with BG -- contending that this LLC is an alter ego of BTI -- a different result is not required; the alter ego allegations are conclusory

made (see S.M. v Madura, 223 AD3d 486, 487 [1st Dept 2024] [emphasis added] ["Alter ego liability requires allegations of complete dominion over a corporation, or other entity, which was used to commit a wrong against the plaintiff thereby causing injury to plaintiff"], citing Baby Phat Holding Co., LLC v Kellwood Co., 123 AD3d 405, 407 [1st Dept 2014]).

Having determined this preliminary issue, the Court now addresses the remaining part of the motion to dismiss the complaint against defendants LARRY A. MEDIN (Medin) and BTI.

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]). 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," is not part of the analysis (Sander v Winship, 57 NY2d 391, 394 [1982]).

In this action, the causes of action plaintiffs assert against defendants BTI and Medin are: (1) misappropriation of trade secrets; (2) breach of confidence; (3) fraud; (4) aiding and abetting fraud; (5) fraudulent inducement; (6) fraudulent concealment; (7) breach of fiduciary duty; (8) aiding and abetting breach of fiduciary duty; (9) tortious interference; (10) unjust enrichment; (11) unfair competition; (12) breach of contract; (13) breach of attorney-client and/or special relationship; (14) civil conspiracy; and (15) declaratory judgment and equitable relief. The Court addresses each in turn 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 Medin and BTI, among other defendants, acquired a computational method known as the Brandtransact 50 Index (BTW50 Index). They further allege the BTW50 Index was plaintiff William Zabit's (Zabit) "brilliant

idea" that 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"]). Plaintiffs make no allegation that Zabit exclusively knew of this idea or that he shared the idea for the BTW50 Index exclusively and/or confidentially with any particular person or group of limited persons at BTWW. No factual allegations exist as to "the extent of measures [if any] taken to guard the secrecy of the information" relating to Zabit's idea or once realized, the algorithm (see Restatement of Torts § 757, Comment b).

Indeed, accepting the allegations in the light most favorable to plaintiffs, the facts alleged infer progressive sharing of Zabit's idea and the resulting BTW50 Index, not careful preservation of a trade secret. The broadly set forth facts in the complaint are that Zabit shared his idea for the algorithm with plaintiff BTWW for purposes of developing it. Over a five-year period, BTWW realized the idea. In referring to that time, plaintiffs set forth no alleged steps and offer no insight into who had access to the idea and stages of

development, how many people worked on the idea, or whether it was managed in any confidential or secretive way (see NYSCEF Doc. No. 01, complaint, ¶ 2).

After the BTW50 went from Zabit to BTWW, Zabit shared the BTW50 Index/algorithm with defendant-movant Medin. Plaintiff "ZABIT hired defendant Larry Medin" and they "formed BTI [BrandTransact Investments]" for the "developing and . . . marketing [of] financial products based on the BTW50 Index" (NYSCEF Doc. No. 001, ¶ 3). The allegations are plain that BTI built on the BTW50 Index and operationalized products based on it, including "the Brand Value Exchange Traded Fund on the New York Stock Exchange" designed to track the BTW50 Index which launched on the New York Stock Exchange (id., at ¶ 34).

These factual allegations of repeated sharing and development are broad, detailing, among other things, no action or attempt to maintain BTW50 as a trade secret. To the extent plaintiffs appear to take the position that Medin should have presumed confidentiality because it was Zabit's idea and BTWW developed that idea into an index, this position is extremely misguided.

Breach of Confidence

Plaintiffs similarly fail to set forth a cause of action against BTI and Medin for breach of confidence.

"The misappropriation of trade secrets can [] occur when one discloses or uses another's trade secret without a privilege to do so, and the 'disclosure or use constitutes a breach of confidence reposed in [them] by the other in disclosing the secret to [them]'" (Zylon Corp. v Medtronic, Inc., 2015 NY Misc LEXIS 1276, *27 [Sup Ct NY Cnty 2015] [Scarpulla, J., Associate Justice, Appellate Division, First Department], quoting Restatement of Torts § 757[b]; see also Lis v Lancaster, 2024 NY Misc Lexis 73132, *23-24 [Sup Ct NY Cnty 2024]). "To determine whether a duty of confidence exists between the parties, the relevant question is whether the defendant knows or should know that the information is plaintiff's trade secret and that its disclosure is made in confidence" (id. [internal quotation marks omitted], quoting Restatement of Torts § 757[b], Comment on clause b).

Further, under the Restatement (Third) of Unfair Competition, which has been incorporated into New York's trade secrets law:

> "[a] person to whom a trade secret has been disclosed owes a duty of confidence to the owner of the trade secret . . . if: (a) the person made an express promise of confidentiality prior to the disclosure of the trade secret; or (b) the trade secret was disclosed to the person under circumstances in which the relationship between the parties to the disclosure or the other facts surrounding the disclosure justify the conclusions that, at the time of the disclosure, (1) the person knew or had reason to know that the disclosure was intended to be in confidence, and (2) the other party to the disclosure was reasonable in inferring that the person consented to an obligation of confidentiality"

(Restatement (Third) of Unfair Competition, § 41; see also Wiener v Lazard Freres & Co., 241 AD2d 114, 124 [1st Dept 1998]).

Additionally, "in some cases an express agreement regarding the confidentiality of particular information may be evidence of the parties' expectations regarding the confidentiality of other information not within the scope of the agreement" (Zylon Corp., 2015 NY Misc LEXIS 1276, *31, citing Restatement (Third) of Unfair Competition, § 41).

Here, plaintiffs' breach of confidence claim against Medin is predicted entirely on their conclusory allegation that the BTW50 Index is trade secret. However, as addressed in this Court's dismissal of the cause of action for misappropriation of a trade secret, plaintiffs allege no facts in the complaint to

indicate that the BTW50 Index was disclosed to any party confidentially or as proprietary information.

Further, plaintiffs' assertion that "explicit confidentiality agreements" exist between them and Medin are factually unsupported (NYSCEF Doc. No. 01, complaint, p 79, and Doc. No. 66, plaintiffs' opposition to motion to dismiss). A review of the 98-page complaint reveals no allegations regarding the date, nature, scope, terms, or parties to any such agreements (see generally NYSCEF Doc. No. 01, complaint). In fact, the term "confidentiality agreement" does not appear anywhere in the complaint, and the term "non-disclosure agreement" appears only in passing as part of a broader narrative, without any supporting detail.[2]

Plaintiffs also fail to set forth a breach of confidence cause of action against BTI. They merely credit Medin's alleged breach of confidence to BTI in an impermissible group pleading (see Principia Partners LLC, 194 AD3d at 584; see also Aetna Cas. & Surety Co., 84 AD2d at 736).

[2] Specifically, the term "non-disclosure agreement" appears six times in the 98-page complaint.

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"]).

"To plead a claim for [fraud], fraud in the inducement, or fraudulent concealment, plaintiff must allege facts to support

the claim that it justifiably relied on the alleged misrepresentations" (ACA Fin. Guar. Corp. v Goldman, Sachs & Co., 25 NY3d 1043 [2015] [emphasis added]). The Court of Appeals has held:

> "It is well established that if . . . the plaintiff has the means available to it of knowing, by the exercise of ordinary intelligence, the truth of the real quality of the subject of the representation, the plaintiff must make use of those means, or it will not be heard to complain that it was induced to enter into the transaction by misrepresentations"

(id. [emphasis added], quoting Schumaker v Mather, 133 NY 590, 596 [1892], and citing DDJ Mgt., LLC v Rhone Group L.L.C., 15 NY3d 147, 154 [2010]).

"Although the issue of justifiable reliance is generally a question of fact that is not amenable to summary resolution, [the governing First Department has] held that, as a matter of law, a sophisticated plaintiff cannot establish it entered into [a] transaction in justifiable reliance on alleged misrepresentations if that plaintiff failed to make use of the means of verification that were available to it" (Ventur Group, LLC v Finnerty, 68 AD3d 638, 639 [1st Dept 2009] [internal citations and quotations omitted] [emphasis added]).

Here, plaintiffs allege that Medin falsely represented to Zabit that he was at risk of losing a personal loan Zabit made to BTI in the amount of $250,000.00 and of losing the "BTW

Index" (NYSCEF Doc. No. 01, complaint, p 52, 57).[3] Plaintiffs allege that Medin knowingly made this misrepresentation solely to induce Zabit to enter into a Second Operating Agreement, restructuring BTI.

The facts alleged are that, on or around March 2017, Zabit, Medin and defendant Frank Zaribi executed said agreement, which provides that Zarabi, a new BTI member, contributed $900,000.00 in exchange for 54% of BTI, Larry A. Medin contributed $533,333.00 for 32% of BTI and Zabit contributed $233,333.00 for 14% of BTI (see id., Exhibit A to the Second Operating Agreement [setting forth membership participation percentage and capital accounts]). Notably, both Zabit's and Medin's individual shares decreased (id.).

However, plaintiffs allege no factual circumstances that indicate the financial condition of BTI at the time for purposes of inferring that Medin misrepresented the need for a new investor. In any event, plaintiffs' do not allege that BTI's financial state was uniquely within Medin's knowledge or that Zabit -- who was the majority owner of a two-person membership -- had no means available to request review of BTI's finances or that anyone prevented Zabit from making use of those means (see LMM Capital Partners, LLC v Mill Point Capital, LLC, 224 AD3d

[3] The complaint does not provide any explanation as to how plaintiff Zabit would lose the BTW50 Index if Zabit failed to accept defendant ZARABI's offer.

504, 508 [1st Dept 2024]; Ventur Group, LLC, 68 AD3d at 639 [finding that "having failed to make any effort to verify [defendant's] representations concerning [defendant's] client relationships [], plaintiff cannot demonstrate justifiable reliance on the misrepresentations"); OmniVere, LLC v Friedman, 174 AD3d 443, 444 [1st Dept 2019] [finding that third-party plaintiff failed to sufficiently allege justifiable reliance on the alleged misrepresentations regarding plaintiff's financial projections since "[third-party plaintiff] had the means to discover the true nature of the transaction by the exercise of ordinary diligence but failed to make use of those means"]).

Plaintiffs also fail to meet the heightened pleading requirements of fraud against BTI (see CPLR § 3016 [b] [the circumstances constituting the wrong shall be stated in detail"]). In this regard, plaintiffs allege that BTI, which included only Medin and Zabit at the time, entered a licensing and royalty agreement known as the Tri-Agreement with defendant TENET PARTNERS. Therein, Tenet Partners exclusively granted BTWW "use of [BTI's] brand data for the BTW50 Index" (see NYSCEF Doc. No. 01, complaint, p 36). However, plaintiffs fail to allege BTI made any material misrepresentation or concealment of material fact.

Instead, plaintiff alleges Medin, not BTI, was "scheming" against Zabit to destroy both BTI and BTWW by "insert[ing]" a

clause in the Tri-Agreement, which permitted Tenet to terminate the agreement "if BTI does not pay minimum yearly royalites of $100,00.00 or 20% of BTI gross revenues, whichever is greater" (id.).

However, the facts are that this "critical" provision was set forth in black letter within the agreement to which Zabit was privy both as majority owner of BTI and member of BTWW (id.). Further, the complaint alleges no facts to indicate Medin anticipated BTI would default in making the minimum payment or prevented BTI from making the requisite royalty payments when due. Plaintiffs' conclusory allegations, without more, appear to rest on suspicion of fraud and wrongdoing without any particularized facts.

Breach of Contract

Plaintiffs also fail to state the cause of action for breach of contract against BTI and Medin.

To maintain an action for a breach of contract, the plaintiff must show: that (1) a contract exists between the parties; that (2) plaintiff performed in accordance with the contract; that (3) defendants breached their contractual obligations; and that (4) defendants breach resulted in damages (see generally 34-06 73, LLC v Seneca Ins. Co., 39 NY3d 44, 51

[2022] [quotations and citations omitted] [discussing the standard for a breach of contract in the context of a pleading]).

Here, plaintiffs argue that Medin breached the First Operating Agreement by "changing the operating structure of BTI without the freely-given [sic] approval of a supermajority of members" and by "not repaying the outstanding loans from [plaintiff] ZABIT" (NYSCEF Doc. No. 01, complaint, p 30, 59). However, what plaintiffs identify as a "breach" is, in reality, the parties to the original structuring agreement entering into a superseding agreement, adding a new member based on that member's capital contributions.

Indeed, the facts alleged are that Medin and Zabit executed a Second Operating Agreement with defendant FRANK ZARIBI (Zaribi) (see NYSCEF Doc. No. 08, Second Operating Agreement, ¶3). Therein, Zarabi, a new BTI member, agreed to contribute $900,000.00 in exchange for 54% of BTI, Larry A. Medin contributed $533.000 for 32% of BTI and Zabit contributed $233,333.00 for 14% of BTI (see id., Exhibit A to the Second Operating Agreement [setting forth membership participation percentage and capital accounts]). Plaintiffs identify no contractual provision in the First Operating Agreement or otherwise prohibiting such action.

Similarly misplaced is plaintiffs' conclusory allegation that Medin breached the Second Operating Agreement "by disposing of one of BTI's most important assets, the licensing agreement to the BTW50 Index, without a sound business reason" (NYSCEF Doc. No. 01, complaint, and Doc. No. 66, plaintiffs' memorandum of law in opposition). Plaintiffs point to no provision in the Second Operating Agreement that precluded BTI from entering into a licensing agreement. Further, the facts alleged are that BTI, including both Medin and Zabit, entered the Tri-Agreement with Tenet and BTWW, also including Zabit.

Plaintiffs also allege that BTI breached the "Licensing and Royalty Agreement between [plaintiff] BTWW] and BTI," which required thirty days' notice upon termination (NYSCEF Doc. No. 01, complaint, p 65-66). However, the complaint alleges that "on May 01, 2018, MEDIN sent a letter to ZABIT declaring the dissolution of the Licensing and Royalty Agreement . . . [and] that MEDIN's letter terminated that agreement effective June 01, 2018" (id., at p 66). Therefore, as pleaded, the facts reflect compliance with the alleged thirty-day notice requirement.

Plaintiffs also allege that BTI "broke the Tri-Agreement with BTWW and [defendant TENET PARTNERS] . . . by cutting off payments to [TENET PARTNERS]" (NYSCEF Doc. No. 66, plaintiffs' memorandum of law in opposition, p 43). However, plaintiff does not explain how BTI "cut off" payments. To the extent this word

choice indicates a purposeful stopping of payments despite BTI having funds available to make them, plaintiffs provide no facts concerning the financial condition of BTI. Instead, the facts alleged are that BTI notified defendant TENET PARTNERS "that it could not make the minimum payment" due under the Tri-Agreement (NYSCEF Doc No. 01, complaint, p 38).

Breach of Fiduciary Duty against Defendant Medin

The breach of fiduciary duty cause of action against Medin is dismissed as duplicative of plaintiffs now dismissed fraud causes of action. The allegations arise from the same facts and allege the same misconduct, and these causes of action against Medin are framed specifically in fraud terms (see Interventure 77 Hudson LLC v Falcon Real Estate Investment Co., LP, 172 AD3d 481, 482 [1st Dept 2019]; see also Stefatos v Frezza, 95 AD3d 787 [1st Dept 2012] [affirming dismissal of fraud, misrepresentation, and breach of fiduciary duty claims as duplicative where they arose from the same facts and alleged the same damages]; see also William Kaufman Org., Ltd. v Graham & James, 269 AD2d 171, 173 [1st Dept 2000]).

As to BTI, plaintiff's opposition papers do not challenge the dismissal of its breach of fiduciary duty claim (see NYSCEF Doc. No. 66, plaintiffs' memorandum of law in opposition, p 31

["Zabit submits he has plausibly pled a claim against Medin for breach of fiduciary duty"], and p 33 [arguing only that defendant FRANK ZARABI "aided and abetted Medin's breach of [fiduciary] duty"]). Accordingly, this cause of action against BTI is dismissed as unopposed.

Aiding and Abetting Breach of Fiduciary Duty against Defendant Medin

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 damages as a result of the breach" (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]). 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]).

Plaintiffs fail to set forth this cause of action of aiding and abetting against Medin because the facts set forth paint Medin as the fiduciary that breached its obligation to plaintiff Zabit; he cannot be both the primary wrongdoer and the aider/abettor.

Plaintiff's opposition papers do not challenge the dismissal of its cause of action for aiding and abetting breach of fiduciary duty against BTI (see NYSCEF Doc. No. 66, plaintiffs' memorandum of law in opposition, p 31 ["Zabit submits he has plausibly pled a claim against Medin for breach of fiduciary duty"], and p 33 [arguing only that defendant FRANK ZARABI "aided and abetted Medin's breach of [fiduciary] duty"]). Accordingly, this claim is also dismissed.

Tortious Interference with Contract

To state a cause of action for tortious interference with a contract, a plaintiff must demonstrate (1) "the existence of a valid contract between the plaintiff and a third party, [2] defendant's knowledge of that contract, [3] defendant's intentional procurement of the third party's breach of the contract without justification, [4] actual breach of the contract, and [5] damages resulting therefrom" (330 Acquisition Co., LLC v Regency Savings Bank, F.S.B., 293 AD2d 314, 315 [1st Dept 2002], quoting Lama Holding Co. v Smith Barney, Inc., 88 NY2d 413, 424 [1996]).

Here, the alleged contract is the Tri-Agreement, which the following parties executed: BTWW, BTI, and defendant TENET

PARTNERS. Medin was the managing member of BTI at the time it was executed, "not a stranger" to the contract (Ashby v ALM Media, LLC, 110 AD3d 459 [1st Dept 2013] [dismissing tortious interference claim against corporate officer because he "was not a stranger to plaintiff's contract with [the breaching party] as he was one of [the breaching party's] executives"]).

Similarly, BTI is not alleged to be a "third party" to the Tri-Agreement, but a contracting party (see, e.g., XpresSpa Holdings, LLC v Cordial Endeavor Concessions of Atlanta, LLC, 171 AD3d 511, 513 [1st Dept 2019] ["The tortious interference with contract claim fails because [defendants] were not strangers to these agreements"]; Buller v Giorno, 28 AD3d 258, 258-259 [1st Dept 2006] [dismissing the tortious interference claim against a defendant who "was a party to the allegedly interfered-with agreement"]).

Therefore, plaintiffs fail to set forth this cause of action for tortious interference against Medin and BTI.

Unjust Enrichment against Defendants Medin and BTI

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]). It is well established that "the existence of a valid and enforceable written contract governing a particular subject matter ordinarily precludes recovery in quasi contract for events arising out of the same subject matter" (Lam Pearl St. Hotel, LLC v Golden Pearl Constr. LLC, 200 AD3d 521 [1st Dept 2021]). "A quasi contract only applies in the absence of an express agreement, and is not really a contract at all, but rather a legal obligation imposed in order to prevent a party's unjust enrichment" (Clark-Fitzpatrick, Inc. v Long Is. R.R. Co., 70 NY2d 382, 388 [1987]).

Here, the complaint acknowledges the existence of two distinct contracts governing the subject matter of the dispute: the Reorganization and Second Operating Agreements, and the Tri-Agreement (see generally NYSCEF Doc. No. 01, complaint). BTWW, BTI and Medin were parties to one or both of these agreements, and those agreements govern the parties' relationship and heart of this matter (see generally NYSCEF Doc. No. 01, complaint). Therefore, plaintiffs also fail to set forth a cause of action for unjust enrichment against both BTI and Medin.

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, such as proprietary information or trade secrets (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], and citing Out of Box Promotions, LLC v Koschitzki, 55 AD3d 575, 578 [2d Dept 2008]). "[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, the complaint alleges that the BTW50 Index constitutes a trade secret. However, as discussed earlier in this decision, the supporting facts in the complaint include that the BTW50 Index went from individual to successive companies without any apparent secrecy (NYSCEF Doc. No. 001,

complaint, ¶ 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"]; see also id., at ¶ 2 [plaintiff Zabit concedes that he shared his idea for the algorithm with a company -- plaintiff BTWW -- to develop the Index, and BTWW spent five years developing it]).

These factual allegations, even considered in the requisite light most favorable to plaintiffs, do not reflect that the BTW50 Index was a "commercial advantage which belonged exclusively to" plaintiffs (Valkyrie AI LLC, 233 AD3d at 460 [emphasis added]). Therefore, plaintiffs fail to state a cause of action for unfair competition based on misappropriation of an exclusive commercial advantage.

Aiding and Abetting Breach of Attorney-Client Special Relationship against Defendants BTI and Medin

Plaintiffs' allegation that BTI and Medin aided and abetted a breach of an attorney-client relationship between Zabit and defendants BACON LAW GROUP (law firm) and THOMAS C. BACON (attorney) does not state a cause of action on the facts. Law firm and counsel were not attorneys to Zabit, individually (NYSCEF Doc. No. 28, plaintiffs' opposition to motion to

dismiss, p 19 [plaintiff "Zabit agrees he was never in direct privity with Bacon Law Group or Bacon himself . . ."]).

The facts alleged are that BTI hired law firm and attorney as counsel for the LLC (see 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]).

Civil Conspiracy against defendants BTI and Medin

"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, plaintiffs have not adequately alleged an underlying tort against them (see Cohen Bros. Realty Corp., 181 AD3d at 404 ["to establish a claim of civil conspiracy, the plaintiff must demonstrate the primary tort"]). Therefore, they fail to set forth a conspiracy cause of action against defendants BTI and Medin.

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 defendants BTI and Medin. Therefore, plaintiffs' claim for injunctive relief 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]). "A bona fide justiciable controversy [is] defined as a real dispute between adverse parties, involving substantial legal interests for which a declaration of rights will have some practical effect" (Parker v Hilton, 233 AD3d 1472, 1474 [4th Dept 2024] [emphasis added], quoting Salvador v Town of Queensbury, 162 AD3d 1359, 1360 [3d Dept 2018]). "If there is no justiciable controversy, the CPLR 3211 (a) (7) motion should be granted, the complaint dismissed, and no declaration issued" (Kerri W.S. v Zucker, 202 AD3d 143, 154 [4th Dept 2021]).

Plaintiffs' cause of action for a declaratory judgment fails against defendants Medin and BTI because it presumes that the BTW50 Index is a protected trade secret, and that defendants Medin and BTI misappropriated it through a fraudulent scheme (see Luxus Aviation, LLC v Kermin Media LLC, 91 AD3d 569 [1st Dept 2012] [holding that "the cause of action for a declaratory judgment . . . presume[s] that [defendant] breached the sale agreement. Since no underlying breach has been asserted, [this]

ancillary claim cannot be maintained"]). Plaintiffs' own opposition highlights this point, asserting that they are entitled to a declaratory judgment because "the whole of the allegations of the complaint demonstrate that plaintiffs were originally the sole and exclusive owners of the BTW50 Index and that it was wrongfully stolen from them through the conspiratorial conduct of Medin" and BTI (see NYSCEF Doc. No. 66, plaintiffs' memorandum of law in opposition, p 51).

As the underlying theories are insufficiently pled against defendants Medin and BTI, there is no bona fide justiciable controversy, i.e. a "real dispute between adverse parties", for purposes of a declaratory judgment cause of action (Parker v Hilton, 233 AD3d at 1474).

Accordingly, it is hereby

ORDERED that the complaint against defendants BRANDOMETRY GROUP, LLC and LAM ASSOCIATES, INC. is dismissed entirely pursuant to CPLR § 3013; it is further

ORDERED that the theft/embezzlement, fraudulent misrepresentation, and unfair trade practices causes of action asserted against defendants BRANDOMETRY, LLC F/K/A BRANDTRANSACT INVESTMENTS, LLC and LARRY A. MEDIN are dismissed, without opposition; it is further

ORDERED that misappropriation of trade secrets, breach of confidence, fraud, aiding and abetting fraud, fraudulent

inducement, fraudulent concealment, breach of fiduciary duty, aiding and abetting breach of fiduciary duty, tortious interference, unjust enrichment, unfair competition, breach of contract, breach of attorney-client and/or special relationship, civil conspiracy, and declaratory judgment and equitable relief causes of action asserted against defendants BRANDOMETRY, LLC F/K/A BRANDTRANSACT INVESTMENTS, LLC and LARRY A. MEDIN are dismissed pursuant to CPLR § 3211 (a) (7) for failure to state a cause of action; it is further

ORDERED that the complaint against defendants BRANDOMETRY, LLC F/K/A BRANDTRANSACT INVESTMENTS, LLC and LARRY A. MEDIN is dismissed in its entirety; it is further

ORDERED that defendants shall serve this order with notice of entry on plaintiffs and 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

4/16/2026
DATE

EMILY MORALES-MINERVA, J.S.C.

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