

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

2024 NY Slip Op 32363(U)

July 10, 2024

Supreme Court, New York County

Docket Number: Index No.: 652481/2023

Judge: Joel M. Cohen

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This opinion is uncorrected and not selected for official publication.

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

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BARONS MEDIA, LLC,	INDEX NO. <u>652481/2023</u>
Plaintiff,	MOTION DATE <u>05/22/2024</u>
- v -	MOTION SEQ. NO. <u>004</u>
SHAPIRO LEGAL GROUP, PLLC,	
Defendant.	<b>DECISION + ORDER ON MOTION</b>
-----X	

HON. JOEL M. COHEN:

The following e-filed documents, listed by NYSCEF document number (Motion 004) 165, 166, 167, 168, 169, 170, 171, 172, 173, 174, 175, 204, 205, 206, 207, 208, 209, 210, 211, 212, 213, 214, 215, 216, 217, 218

were read on this motion to VACATE STAY OF DISCOVERY.

Plaintiff Barons Media, LLC’s (“Plaintiff”) motion to lift the stay of discovery is **denied**.

On October 5, 2023, the Court granted Defendant Shapiro Legal Group’s (“Defendant”) motion for a stay of discovery pending the result in *Barons Media, LLC v. KMBR Media, et al.*, Case No. 2020-007200-CA-01 (the “Florida Action”) (the “Stay Order” [NYSCEF 114]). The stay was granted “because the result in the Florida Action may impact the viability of this case” (Stay Order at 2).

Trial in the Florida Action was scheduled to commence in October of 2023, shortly after the Stay Order was issued. However, the trial was adjourned, and, on December 5, 2023, Plaintiff requested the stay be lifted (NYSCEF 130). On February 13, 2024, the Court continued the stay “conditioned on the parties completing expedited discovery once the Florida trial is completed” with leave to move to lift the stay should the trial be adjourned again (NYSCEF 149).

On April 18, 2024, Plaintiff issued a subpoena in the Florida Action to Mark Shapiro, Esq. of Defendant Shapiro Legal Group (NYSCEF 170). On April 20, 2024, counsel for Defendant agreed to accept service of the subpoena on Mr. Shapiro's behalf on the conditions that (a) the subpoena be issued out of a New York court in accordance with CPLR 3119 (Uniform Interstate Depositions and Discovery Act or "UIDDA"); (b) payment of the \$47,514.60 awarded to Defendant in the related special proceeding in which Plaintiff sought discovery from Defendant in the Florida Action before naming them as a party in this action (the "Special Proceeding" [Index No. 152278/21]); and (c) that service would be accepted under a reservation of all rights. On April 23, 2024, the Hon. Mavel Ruiz issued a commission in the Florida Action authorizing the issuance of a subpoena to Mr. Shapiro in New York (NYSCEF 169).

On May 1, 2024, a conference was held before Judge Ruiz in the Florida Action (NYSCEF 205 [Transcript]). With respect to the subpoena to Mr. Shapiro, Judge Ruiz stated:

22 I am not making any findings now. If I had  
 23 a hearing, though, I could find that, under this  
 24 Court 's interpretation, the plaintiff has not  
 25 complied with New York law. Therefore, this Court is  
 1 not going to order Mr. Shapiro to appear until this  
 2 Court believes that New York law has been followed  
 3 and he has been properly served. Or vice versa, if  
 4 the Court finds that the plaintiff has complied with  
 5 New York law and properly served Mr. Shapiro, then  
 6 this court can order Mr. Shapiro in the proper manner  
 7 to appear. I don't know what else --

Judge Ruiz directed that the Florida Action would be scheduled for a "special set trial" in September of 2024 (NYSCEF 205 [Tr. 167-169]). Defendants in the Florida Action subsequently submitted a proposed case management plan for trial in September of 2024 (NYSCEF 207).

On May 2, 2024, counsel for Plaintiff wrote to the Court indicating that “[d]uring yesterday’s hearing in the Florida Action, Judge Mavel Ruiz declined to place the case back on the court’s trial calendar, indicated that she expects to schedule the trial no earlier than September 2024” and that Mr. Shapiro’s deposition remained pending (NYSCEF 163).

Following an informal conference, Plaintiff moved to lift the stay on May 22, 2024. Plaintiff argues that the stay is no longer reasonable because trial in the Florida Action will be delayed by at least eleven months from its intended start date; because the result of the Florida Action will not determine all of the issues in this action; and because Plaintiff’s aiding and abetting claims in this action are broader than those in the Florida Action. Defendant opposes and argues that Plaintiff has not established prejudice; that trial in the Florida Action will commence in September of 2024; and that Plaintiff caused the complained of delay.

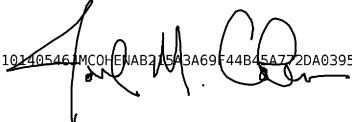
The continuation of the stay is appropriate in this instance (*3B Assoc. LLC v eCommission Sols., LLC*, 226 AD3d 527 [1st Dept 2024] citing *Belopolsky v. Renew Data Corp.*, 41 A.D.3d 322, 322–323, 837 N.Y.S.2d 154 [1st Dept. 2007] [staying discovery in a fraudulent conveyance action pending a breach of contract action]). Barons’ only remaining cause of action is for aiding and abetting breach of fiduciary duty, which necessarily requires an underlying breach (*Kaufman v Cohen*, 307 AD2d 113, 125 [1st Dept 2003]), which is the subject of the Florida Action. Clearly, the result of the Florida Action is highly relevant to – and potentially dispositive of – this case. Further, it appears from the evidence presented that Plaintiff bears some – perhaps most – of the responsibility for the delay.

Accordingly, it is

**ORDERED** that Plaintiff’s motion to lift the stay of discovery is **DENIED**; it is further

**ORDERED** that the parties submit a proposed expedited discovery schedule within seven (7) days of the conclusion of the Florida Action.

This constitutes the decision and order of the Court.

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JOEL M. COHEN, J.S.C.

7/10/2024  
DATE

CHECK ONE:	<input type="checkbox"/>	CASE DISPOSED	<input checked="" type="checkbox"/>	NON-FINAL DISPOSITION	
	<input type="checkbox"/>	GRANTED	<input checked="" type="checkbox"/> DENIED	<input type="checkbox"/>	OTHER
APPLICATION:	<input type="checkbox"/>	SETTLE ORDER		<input type="checkbox"/>	SUBMIT ORDER
CHECK IF APPROPRIATE:	<input type="checkbox"/>	INCLUDES TRANSFER/REASSIGN		<input type="checkbox"/>	REFERENCE