

1 COURT OFFICER: Two motions calendar 19 and
2 53. Calendar 19 is Motion Sequence 2, that's
3 Defendant's motion. Calendar 53 is Motion Sequence 3,
4 that is Plaintiff's motion. We will take appearances.

5 We always start when we take appearances
6 with the Plaintiff regardless of who the Movant is.

7 MR. LITMAN: Good morning, your Honor, my
8 name is Richard Litman, I'm a patent attorney. I'm
9 appearing Pro Se in this case.

10 THE COURT: Your address?

11 MR. LITMAN: 172 Sterling Place, apartment
12 8, Brooklyn, New York 11217.

13 MR. GOULD: Aron Gould, on behalf of
14 Defendant Joshua Goldberg from the Law Firm of Connell
15 Foley, LLP, address is 87 -- 875 Third Avenue, 21st
16 floor, New York, New York 10022.

17 THE COURT: Counselors, you can either stand
18 or sit, however you feel comfortable.

19 To the Defendant my question is how many
20 causes of action are you seeking to dismiss, how many
21 were in there?

22 MR. GOULD: All five causes of action, your
23 Honor.

24 THE COURT: So we have -- we have
25 constructive trust, breach of fiduciary relationship, an

1 equitable accounting, misappropriation and what's the
2 last one?

3 MR. GOULD: Unjust enrichment.

4 THE COURT: And I want to ask, Mr. Litman,
5 I'm going to first actually start with Defendant because
6 -- you can sit down. Sit down. I tell everybody you
7 can sit down.

8 Is this or is it not governed by the
9 arbitration that was held?

10 MR. GOULD: It is governed by the arbitration
11 whereby the arbitrator in Virginia already found that
12 the contract that the Plaintiff has -- issues related to
13 payments thereto that my client is not a party to that
14 contract just because he signed it as a managing partner
15 of the law firm. Two, that there are no fiduciary
16 duties related to that contractual relationship.
17 Three, that there's no tort liability related to that
18 relationship and thereby there could be no equitable
19 accounting because there's no fiduciary duty. There
20 could be no breach of fiduciary duty because there's no
21 fiduciary duty. There could be no constructive trust
22 claim because there's no fiduciary duty. There could
23 be no unjust enrichment claim because the terms of the
24 payments to another party, the NGM Law Firm are governed
25 by an expressed written contract and therefore you can't

1 have -- an unjust enrichment does not lie where an
2 expressed contract governs the payments and conduct at
3 issue. And then that's related to the fourth claim.
4 The fifth claim I will concede as not governed by the
5 arbitration. However, the allegations --

6 THE COURT: Meaning?

7 MR. GOULD: -- the misappropriation.

8 The misappropriation relates to alleged
9 conduct also on behalf of a law firm in putting Mr.
10 Litman's name on their website. And, two, as amended
11 in briefing, not -- it is not set forth in this
12 complaint in -- there's allegations that NGM when filing
13 patent applications on which Plaintiff was receiving 20
14 percent of the revenue that that was also
15 misappropriation, but the website is not my client Josh
16 Goldberg's website, it is a law firm's website that he's
17 a managing partner of. He cannot be personally liable
18 for any alleged misappropriation on a website that he
19 has not personally owned. And the same goes for patent
20 allegations which were filed by the NGM Law Firm, not
21 Mr. Goldberg personally. So under the Civil Rights 50
22 and 51 it is the party that uses -- is alleged to have
23 used the name and likeness that is liable. My client is
24 not alleged to have used it in either portions of the
25 conduct that Plaintiff alleges creates the liability.

1 Further, we also know this because the Plaintiff is
2 confirmedly pursuing a Federal lawsuit against NGM for
3 the same exact conduct that he is alleging in this
4 lawsuit whereby my client personally was misusing his
5 name. He has a Federal lawsuit in which he is alleging
6 a Lanham Act claim against NGM or NGM's use of his name
7 and likeness in patent applications and on their
8 website. So both claims cannot be true. You can't
9 have the Lanham Act claim that is alleging that NGM is
10 using his name and likeness on their website in patent
11 applications and then my client is personally using his
12 name and likeness on their website and in patent
13 applications. They are in conflict with one another.

14 THE COURT: What else would you like to say
15 before I turn to Mr. Litman?

16 MR. GOULD: I would like to say it is not
17 just a matter of the arbitration barring Plaintiff's
18 claims. Putting aside the arbitration even if there
19 was not an arbitration, what we are talking about here
20 is that's the crux of the complaint is that payments
21 were not made pursuant to a contract between Mr. Litman
22 and NGM, the law firm. That is -- that contract was an
23 employment contract with deferred compensation. Under
24 New York Law there are no fiduciary relationships
25 related to such contracts. Specifically that contract

1 also included a provision that stated Mr. Litman was
2 not a partner of the NGM Law Firm, therefore, there's no
3 fiduciary relationships that were --

4 THE COURT: What was the business entity, is
5 it a PLLC?

6 MR. GOULD: Professional limited liability
7 company, your Honor, governed by Virginia law.

8 THE COURT: Virginia Liability Company Act?

9 MR. GOULD: Correct.

10 THE COURT: Virginia Code Section 13.1-1109?

11 MR. GOULD: Yes.

12 Under that -- under the Virginia
13 professional and limited liability company act a member
14 -- managing member of a professional limited liability
15 company is not personally liable for contractual
16 obligations of the company, which is what the crux of
17 what Plaintiff is seeking is to hold Josh Goldberg
18 personally liable for an arm's length employment
19 contract that in which fiduciary relationships do not
20 ignore and he is not a party. And, further, there
21 could be no tort liability subject to such a contract
22 because the conduct at issue which comes down to
23 Plaintiff having an issue with payments being made
24 pursuant to that contract are not -- are not subject to
25 tort liability and they are not subject to any type of

1 fiduciary relationship that would allow him to proceed
2 on breach of fiduciary duty claim, an equitable
3 accounting claim, a constructive trust claim. And then,
4 lastly, you can't have an unjust enrichment claim
5 because the expressed contract governs the parties
6 relationship.

7 THE COURT: Why was there arbitration, does
8 -- was there an arbitration clause?

9 MR. GOULD: There's an arbitration --

10 THE COURT: Then why are we here?

11 MR. GOULD: -- my client is actually not --

12 THE COURT: Correct me if I'm wrong, because
13 Mr. Goldberg wasn't a party to this agreement, the law
14 firm was, so Mr. Goldberg did not agree to arbitrate
15 anything?

16 MR. GOULD: You are correct, your Honor.

17 However --

18 THE COURT: As I was reviewing the papers I
19 was wondering about that. Okay. Really the answer was
20 staring one in the face according to your position but I
21 just want to hear of course from Mr. Litman, okay.

22 MR. GOULD: Our position is that this whole
23 complaint is just a means by which to try to circumvent
24 going back to arbitration related to these payments.

25 THE COURT: I think I have your position.

1 MR. GOULD: Thank you, your Honor.

2 THE COURT: Of course, there's always two
3 sides to the story. Now I want to hear Mr. Litman.
4 You can sit down if you want. It is okay. I am
5 informal.

6 MR. LITMAN: Thank you, your Honor.

7 Well, Mr. Gould speaks about an employment
8 agreement. I speak about a sale of my law practice in
9 2017 to the law firm, which was a D.C. law firm.
10 Actually that is in the contract. And at the beginning
11 of my answers -- I did prepare a bench brief if you
12 would like it, your Honor.

13 THE COURT: No. Anything we need we need
14 submitted in advance.

15 MR. LITMAN: Okay.

16 The argument Mr. Gould is making is that
17 this is a contract claim, employment contract claim,
18 arbitration covers employment. Actually, what this is
19 is I sold my practice, I agreed to work in the
20 transitional role as Senior Counsel, not as a patent
21 attorney, I was leaving private practice and not wanting
22 to take on more responsibility. I had this transitional
23 role where I introduced Mr. Goldberg to clients that I
24 had. Very large institutional clients.

25 THE COURT: They were in Saudi Arabia?

1 MR. LITMAN: Yes, Kuwait and all those
2 countries. And some other --

3 THE COURT: King Faisal University?

4 MR. LITMAN: King Faisal University got more
5 patters in 2024 than any other university in the world.

6 THE COURT: Wow.

7 MR. LITMAN: 631 patters. I believe I
8 counted them, I may be incorrect, 467 of those patters
9 had my name on it as attorney of record. And this is
10 way past, you know, this arbitration. The arbitration
11 was in June -- arbitration was June 14, 2023 and the
12 arbitrator adopted the position of Mr. Goldberg and his
13 firm, I guess, that it was as if I died on June 15, 2020
14 when I was approved for disability and that terminated
15 the transitional employment automatically and began the
16 earn out period. It was 100 percent differed payment
17 for the practice, which was a very sizeable practice,
18 you know. And the arbitration had an interim award
19 which was not included but was incorporated in the final
20 award in the papers by Mr. Gould and that interim award
21 spoke about Mr. Goldberg's potential liability for
22 fiduciary -- breach of fiduciary duty and there was a
23 motion made at that time to dismiss that from the case
24 and the arbitrator didn't dismiss it. It went to
25 arbitration in May 2023 and -- the arbitration

1 proceeding was in May 2023 with the award issued June
2 14th of 2023. And after that, you know, the arbitrator
3 said my employment was terminated as Senior Counsel
4 effective June 15, 2020, 3 years earlier which started
5 the payout period for the earn out 3 years earlier. So
6 this is not a contract dispute. I'm not looking for
7 wages or anything. The earn out would be payable to me
8 or if I were dead to my estate, you know, no work, no
9 nothing I had to do for that money. But after that in
10 this 20 -- almost within the same week or two weeks
11 after the award said that I was terminated 3 years
12 earlier they were filing patent applications in my name.
13 And this is, you know, you can't delegate the authority
14 of a patent attorney. A firm is not someone that can
15 take over for an individual patent attorney. Only
16 another patent attorney can take over handling a case
17 and Mr. Goldberg was the responsible partner there
18 taking care of all these clients, managing all their
19 billing. And in the process he was filing these
20 applications to my name and this is not something you're
21 allowed to do. Not permitted by the patent office.
22 It is like certification that the patent is -- is valid,
23 you know, it has what it needs to have and it is like a
24 Rule 11 certification and it is not something the firm
25 does. It is something the individual patent attorney

1 does. By putting my name on these, I guess, this one
2 was filed October 6, 2023 this one in my name and that's
3 with four months after the arbitration award. And
4 somebody -- a patent attorney has to affix his
5 signature, electronic signature personally. You can't
6 have -- you can't put on by somebody else in some other
7 place. It is an individual responsibility. And I
8 didn't even know anything about these until I went
9 looking and I found they got 631 pattens, more pattens
10 that everybody else in the world and 467 of them have my
11 name on it. And that is -- the misappropriation is the
12 misappropriation of identity rights.

13 THE COURT: But why aren't you making that
14 claim against the law firm as apposed to Mr. Goldberg?

15 MR. LITMAN: Because Mr. Goldberg was the
16 one at the law firm that was doing -- that is handling
17 this client. Handling all the accounting for this
18 client. And he eventually changed the names on these
19 patent issues subsequently to his name. So this was a
20 way for him to use my name in conjunction with the firm
21 name on pattens to a huge client to keep that
22 relationship alive because I had a long-term
23 relationship with that university. Almost all the
24 universities are clients of the firm.

25 THE COURT: Let me hear from Mr. Gould what

1 he wants to say in response.

2 MR. GOULD: First, there's nothing in the
3 records about patent applications in the second amended
4 complaint that we are here to discuss today. This was a
5 new allegation that is made in the briefing.

6 THE COURT: Stop. Now let me hear your
7 response to that.

8 MR. LITMAN: I do believe it was the second
9 amended complaint I did include this misappropriation of
10 identity claim, this Section 5051 New York --

11 THE COURT: Did you mention the patent
12 applications?

13 MR. LITMAN: -- I mentioned patters. I
14 mentioned website. I think I could find the paragraph
15 if you want me to. It is not -- if I were to amend it
16 and which I did in Federal Court, I focused in on once I
17 realized what was going on here, it wasn't the Senior
18 Counsel title that I had during this interim employment.

19 THE COURT: The last amended complaint just
20 so I don't have to search through a lot is which NYSCEF
21 document number?

22 MR. GOULD: I don't have that.

23 THE COURT: My rules say you should come
24 prepared with copies or a device on which it is
25 maintained. This way we can have an informed

1 discussion but I think I found it.

2 Do you know what paragraph it is, Mr.
3 Litman, in the second amended complaint, 33, it is 33.
4 Okay, anything else either side that you haven't already
5 said?

6 MR. GOULD: Yes. Patent applications are
7 not governed by Civil Rights Sections 50 and 51. That
8 Section relates to advertisements and use of trade. A
9 patent application filed with the patent office is not
10 something that's used in commerce or is used in
11 advertising to the general public, therefore, it is not
12 even covered -- putting aside these are not my client's
13 patent applications as is evidenced by his Federal
14 complaint, these are -- patent applications are not
15 covered by this Statute because they are not
16 advertisements used in trade. They are an
17 administrative filing related to a patent. They are not
18 used to induce any type of commerce.

19 THE COURT: What do you want to say?

20 MR. LITMAN: I could say a lot, your Honor.
21 There's no other document in U.S. history more
22 commercial than a U.S. patent, because this is a right
23 granted by the Government to an inventor to go out and
24 try to make money from this document . This document
25 represents technology --

1 THE COURT: I have your position. I get
2 what you are saying.

3 What else did you want to say, Mr. Gould?

4 MR. GOULD: Nothing further, your Honor.

5 THE COURT: Okay. All right, I'm now ready
6 to issue a decision. The Defendant's motion to dismiss
7 the causes of action predicated upon constructive trust,
8 breach of fiduciary relationship and equitable
9 accounting should be granted. The amended combination
10 agreement does not discuss the division of profits and
11 losses which would be a prerequisite to construing the
12 existence of a fiduciary relationship. The Court cites
13 Michnick v. Parkell Products 215 AD2d 462 as a fiduciary
14 relationship is a necessary component to establishing
15 those causes of action, they must fail.

16 In terms of unjust enrichment, that too must
17 fail because the relief must lie in breach of contract.

18 In terms of misappropriation the Court finds
19 that there's enough here to show a potential of a
20 triable issue of fact as to whether Goldberg committed
21 -- has committed a tortious act in his personal capacity
22 when reading the complaint in the light most favorable
23 to the non-Movant Mr. Litman in terms of this action at
24 this early stage.

25 These patent applications while technically

1 they might be a piece of paper that's filed with
2 someone's name on it, they could also carry the
3 permissor of somebody prominent as the attorney and that
4 could in effect be a means of obtaining financial
5 profit. So at this early stage, perhaps later down the
6 road with a motion for summary judgment, it might be
7 different. And with respect to that cause of action the
8 Court wants to cite Limited Liability Law Section 609
9 and Turane v MGN, LLC, 171 AD3d 835.

10 So the bottom line is that on calendar 19,
11 madam Clerk, which is sequence 2 we are going to mark
12 that granted to the extent. It is granted to the extent
13 of dismissing all causes of action, except for
14 misappropriation, that stays alive.

15 In terms of calendar 53, which is Motion
16 Sequence 3, that's going to be marked granted to the
17 extent -- to the extent that at this point in time the
18 misappropriation cause of action remains alive.

19 I'm going to ask the two attorneys to please
20 settle a short form order embodying that disposition.

21 Thank you both for your appearances.

22 I will also note for the record for the
23 decision that there was enough show to pierce the
24 corporate veil at this stage -- at this stage of the
25 litigation.

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This is certified a true and accurate transcript of my stenographic notes taken in the above captioned matter.

Charlene Fountaliotis-Squires

CHARLENE FOUNTALIOTIS-SQUIRES

SENIOR COURT REPORTER