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United States District Court,  
S.D. New York.

William WEBB, Plaintiff  
v.  
RLR ASSOCIATES, LTD. and Robert Rosen,  
Defendants.

No. 03 Civ. 4275(HB).

March 19, 2004.

*OPINION & ORDER*

BAER, J. [FN1]

FN1. Lisa Dudzinski, a spring 2004 intern in my Chambers and a second-year law student at New York Law School, provided substantial assistance in the research and drafting of this Opinion.

\*1 Defendant Robert Lewis Rosen Associates, Ltd. ("RLR") moves to strike plaintiff William Webb's ("Webb") jury demand, pursuant to Federal Rules of Civil Procedure ("Fed. R. Civ.P.") 38(a) and 39(a). For the following reasons, defendant's **motion to strike** plaintiff's jury demand is granted.

I. BACKGROUND

A. Factual Background

As this court has already issued two Opinions relating to this case, one confirming the arbitration award (*Robert Lewis Rosen Assocs., Ltd. v. Webb*, 03 Civ. 6338, 2003 U.S. Dist. LEXIS 21317 (S.D.N.Y. Nov. 24, 2003)), and the other granting summary judgment on several of Webb's claims in this action (*Webb v. Robert Lewis Rosen Assocs., Ltd.*, 03 Civ. 4275, 2003 U.S. Dist. LEXIS 23160 (S.D.N.Y. Dec. 23, 2003)), familiarity with the facts is presumed.

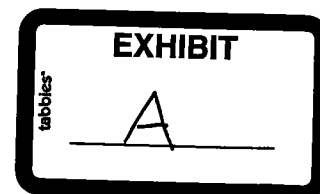
Therefore, only a brief summary is warranted.

In 1986, Webb, a director of televised sporting events, hired RLR, a sports management company, to negotiate contracts on his behalf. The contract between RLR and Webb stipulated that "RLR's services are not exclusive to you [Webb] and we [RLR] shall have the right to perform the same or similar services for others." The contract also required Webb to pay RLR ten percent of his earnings in this industry. The contract between RLR and Webb expired in 1986 and was not renewed until 1997. The 1997 renewal contract covered the period June 8, 1997 through October 12, 2001.

Before the renewal contract took effect, Webb maintains that he had a "loose working relationship under which RLR was compensated for services rendered on a contract-by-contract basis." Compl. ¶ 15. During this time, in the summer of 1995, Webb spoke with John Filippelli ("Filippelli"), who later became the coordinating producer of FOX Baseball, about working as the director of FOX's major league "A" baseball games. Webb contacted Rosen in order to negotiate this FOX contract on his behalf. One month later, Webb learned through Filippelli that RLR had sought to promote another person instead of Webb. At one point, Rosen communicated to Webb that "he would be lucky to do the "B", "C", or "D" game." Compl. ¶ 20. Despite Rosen's alleged disloyal comments and actions, Filippelli still hired Webb to direct FOX's "A" baseball games, and Webb still allowed RLR to negotiate the contract with FOX. Additionally, at the end of February 1997, Webb retained RLR to negotiate his renewal contract with MSG. However, Webb claims that he later discovered that RLR again attempted to promote another client over Webb by telling the coordinating producer of MSG Baseball that "another of RLR's clients was a better baseball director than Mr. Webb." Compl. ¶ 26. Webb now seeks recompense for RLR's alleged disloyalty.

B. Procedural History

On or about April 18, 2001, RLR initiated an arbitration against Webb, pursuant to an arbitration clause in the 1986 agreement, which had been incorporated into the renewal contract. RLR initiated the arbitration to compel Webb to pay fees allegedly owed to RLR for contracts with FOX and MSG that



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became effective on March 1, 2001. During the pendency of the arbitration, Webb commenced an action in this Court, which this Court stayed pending the outcome of the arbitration and later dismissed without prejudice because of Webb's failure to timely notify the Court of the status of the arbitration. In a March 11, 2003 Interim Opinion and Award, the arbitrator denied Webb's claim for fraudulent inducement, and sustained RLR's claim for breach of the extension agreement. On August 21, 2003, RLR filed an action to confirm the arbitration award and on November 24, 2003, this Court confirmed the award. Following the issuance of the March 11 Award, Webb commenced the instant action. On December 23, 2003, relying on the arbitrator's findings that Webb suffered no injury, this Court dismissed Webb's claims for (1) fraud in the inducement, (2) breach of oral contract, (3) breach of fiduciary duty (other than under the faithless servant doctrine), and (4) violations of Article 11 of the New York General Business Law and § 1700.44(a) of the California Labor Code, but allowed Webb's claims of (1) unjust enrichment and (2) breach of fiduciary duty under the faithless servant doctrine to go forward as neither of these claims required a showing of injury. RLR now moves to strike Webb's jury demand in lieu of the fact that the claims that once entitled Webb to a jury have been dismissed.

## II. DISCUSSION

### A. Motion to Strike Jury Demand

\*2 The Seventh Amendment, which determines whether the parties are entitled to a jury trial, provides that "in suits at common law, where the value in controversy shall exceed twenty dollars, the right of trial by jury shall be preserved." Consequently, a plaintiff is entitled to a jury if his claims "involve rights and remedies of the sort traditionally enforced in an action at law, rather than in an action in equity." S.E.C. v. Commonwealth Chem. Secs., Inc., 574 F.2d 90, 95 (2d Cir.1978). However, if the relief he seeks is equitable in nature, a jury trial is not warranted. See Chauffeurs, Teamsters and Helpers, Local No. 391 v. Terry, 494 U.S. 558, 565 (1990).

#### 1. Breach of Fiduciary Duty (Faithless Servant Doctrine)

Because Webb's claim under the faithless servant doctrine is a claim in equity, Webb is not entitled to a jury trial on this claim. The faithless servant doctrine provides relief when an agent is disloyal or unfaithful to his principal, even if the principal suffers no

provable damage. Feiger v. Iral Jewelry, Ltd., 41 N.Y.2d 928, 929 (1977). This doctrine ensures that the unfaithful agent is not compensated for his disloyal actions. See Phansalkar v. Andersen Weinroth & Co., L.P., 344 F.3d 184, 200 (2d Cir.2003). Notably, this court dismissed all of Webb's claims requiring a showing of injury expressly because, as a result of the arbitrator's findings, Webb was collaterally estopped from proving injury. The faithless servant doctrine is an alternative to a claim for breach of fiduciary duty, which compensates the principle for the faithless actions of his agent, even when the principal has suffered no injury. See Phansalkar, 344 F.3d at 200.

Generally, even strict fiduciary duty claims are "actions in equity--carrying with them no right to a trial by jury." Pereira v. Cogan, 00 Civ. 619, 2002 U.S. Dist. LEXIS 8513, at \*7 (S.D.N.Y. May 10, 2002) (internal quotations and citations omitted). However, some allegations of breach of fiduciary duty have been construed as legal when they constitute claims of breach of contract, fraud, fraudulent transfer, negligence, and gross negligence. Id. at \*8 (internal quotations and citations omitted). In this case, the strict breach of fiduciary duty claim, which may have relied on one of the theories discussed in Pereira, has already been dismissed. Webb, 2003 U.S. Dist. LEXIS 23160, at \* 31. Only the equitable version remains.

The fact that Webb seeks monetary damages under the faithless servant doctrine, does not alter his lack of entitlement to a jury. While monetary damages are generally regarded as legal, "an award of monetary relief is not necessarily legal relief." Swan Brewery Co. v. U.S. Trust Co., 143 F.R.D. 36, 41 (S.D.N.Y.1992) (internal quotations omitted). Instead, monetary damages may be considered equitable when "the damages sought are in the nature of restitution, as in actions for disgorgement of improper profits or money wrongfully withheld." Id. at 41, citing Tull v. United States, 481 U.S. 412, 424 (1987). Since Webb--similar to the plaintiff in Swan--seeks the disgorgement of profits, the monetary damage claimed is equitable in nature, and therefore does not entitle Webb to a jury trial.

#### 2. Unjust Enrichment

\*3 Similarly, plaintiff is not entitled to a jury trial based on his claim for unjust enrichment, stemming from RLR's alleged disloyalty, because this claim as well is grounded in equity. [FN2]

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FN2. The "unjust enrichment claim is similar to the faithless servant claim ... both allege that due to disloyalty, the benefit conferred was undeserved ... these claims address the inequity of the benefit derived by the allegedly disloyal actor, rather than remedy the injury or damage suffered by Webb." *Webb*, 2003 U.S. Dist. LEXIS 23160, at \*28.

Unjust enrichment is an equitable doctrine that provides for recovery when (1) there is a benefit conferred upon the defendant by the plaintiff; (2) the defendant is aware of the benefit; and (3) the defendant accepts the benefit under such circumstances as to make it inequitable for him to retain the benefit without payment of its value. *Van Gemert v. Boeing Co.*, 590 F.2d 433, 444 (2d Cir.1987). "Restitution is the traditional remedy employed for unjust enrichment claims." *Golden Pacific Bancorp v. Fed. Deposit Ins. Corp.*, 95 Civ. 9281, 2002 U.S. Dist. LEXIS 24961, at \*49 (S.D.N.Y. Dec. 24, 2002), citing *Brown v. Sandimo Materials*, 250 F.3d 120, 126 (2d Cir.2001). Therefore, Webb's claim for **unjust enrichment** does not entitle him to a **jury** trial. [FN3] *S.E.C.*, 574 F.2d at 95-96. [FN4]

FN3. The fact that Webb seeks punitive damages "does not change the nature of [his] claim to a legal one." *Hodges v. Virgin Atlantic Airways, Ltd.*, 714 F.Supp. 75, 77 (S.D.N.Y.1988) (striking plaintiff's jury demand based in part on the fact that the mere assertion of punitive damages does not "alter the genre of the proceeding."). *Id.* at 78. As discussed, the underlying nature of Webb's claims are in equity. Therefore, the fact that he requested punitive damages--which are of questionable appropriateness here anyway--does not entitle Webb to a jury trial.

FN4. Webb's reliance on *Ideal World Marketing, Inc. v. Duracell, Inc.*, 997 F.Supp. 334, 336 (E.D.N.Y.1998) for the proposition that a jury trial may be awarded for claims in equity is unfounded. *Ideal*, a case from a neighboring district, discusses a plaintiff's request for damages in the context of a Lanham Act suit. The Court's

discussion and conclusion are particular to the area of trademark law, and are therefore inapposite.

#### B. Discretionary/Advisory Jury

This Court also declines to appoint either a discretionary jury or an advisory jury. A discretionary jury is only appropriate in actions, unlike this one, when "a [jury] demand might have been made of right." *Fed.R.Civ.P.* 39(b). And, while the Court's power to empanel an advisory jury, pursuant to *Fed.R.Civ.P.* 39(c), "is entirely discretionary" (*NAACP v. Acusport Corp.*, 226 F.Supp.2d 391, 398 (E.D.N.Y.2002), citing *Glanzman v. Schaffer*, 252 F.2d 333, 334 (2d Cir.1958)), because the legal issues involved are not of a complicated nature, "the interests of judicial economy would not be served in this case by empanelling an advisory jury." *Pan Am Corp., v. Delta Air Lines, Inc.*, 93 Civ. 7125, 1994 U.S. Dist. LEXIS 5704, at \*11 (S.D.N.Y. May 2, 1994). Therefore, this case will proceed as a bench trial.

#### III. CONCLUSION

For the foregoing reasons, defendant's **motion** to **strike** plaintiff's jury demand is granted. The non-jury trial will commence on April 5, 2004.

IT IS SO ORDERED.

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