SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY

PRESENT: **HON. MELISSA A. CRANE** **PART** 60

Justice

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WHITE, ADAM D. et al **INDEX NO.** 655386/2023

Plaintiff,

DECISION AFTER TRIAL

- v -

VACCARO, STEPHEN et al

Defendant.

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Melissa A. Crane, JSC

On February 17-19, 2026, this court held a bench trial concerning all "claims in the case" (Trial Transcript [TT] pg. 2), including the date of dissolution of the parties' law firm partnership. Although the court decided this issue at the preliminary injunction stage, plaintiff was entitled to a trial *de novo,* as the initial determination was made in the context of preliminary relief without the benefit of full discovery (see *Huguenot LLC v. Megalith Cap. Grp. Fund I, LP*, 191 A.D.3d 530 [1st Dep't 2021] ["the grant or denial of a motion for a preliminary injunction "does not constitute the law of the case or an adjudication on the merits, and the issues must be tried to the same extent as though no temporary injunction had been applied for" [citations omitted]; see also *Buchman v. 117 E. 72nd St. Corp.*, 2026 WL 1250568, at *1 [1st Dep't May 7, 2026]). This decision, therefore, is the trial court's final determination on the merits, but should be read in conjunction with the court's discussion of the facts on the decisions determining the motion for a Preliminary Injunction [EDOC 61] and the motion for reargument [EDOC 92].[1] The parties completed post-trial briefing on April 24, 2026.

Date of Dissolution:

In the decision on the preliminary injunction, as well as the decision on plaintiff's reargument motion, the evidence demonstrated the parties agreed to dissolve on March 16, 2023 (see decision and order on Motion 1 [EDOC 61] and decision and order on Motion 3 [EDOC 92, the Reargument decision]). Largely for the reasons discussed in those decisions, the evidence overwhelmingly supports that the parties agreed to dissolve in March 2023. However, the court sees fit to change the date of dissolution from March 16, 2023, to March 29, 2023. On that date, Mr. White wrote in an email to Mr. Vaccaro: "I agree that we will need to work with a skilled mediator we both trust to dissolve our firm as expeditiously as possible" (Def Ex U). Because neither party defends March 16, 2023 as the date of dissolution, the date of March 29, 2023, as reflected in Defendant's Exhibit U, is the date by which BOTH parties evinced an unequivocal desire to dissolve (see *Bogen v. Alston*, 33 Misc. 2d 313 [Sup. Ct. Nassau Cty May 3, 1961] [partnership was dissolved on date that partners stated they desired to have it dissolved, although plaintiff later withdrew his consent to dissolution]). After that point, the firm was in the winding up period (see *Rozof v Rozof*, 244 AD3d 1127, 1128-29 [2d Dep't 2025]).

[1] Contrary to Mr. Levine's characterization, at the recent appellate argument on motion 5, that this court was "punishing" his client because it did not want to follow *Thelen*, the court was always concerned with releasing what money could be allocated:

> THE COURT: Were the parties able to figure out if any of that would have been 50/50?
> MR. LEVINE: We tried and were unsuccessful, though I think during this trial we can probably agree on some of them.
> THE COURT: So some money can be released?

If a release of some funds did not come to pass, it was only because of the continuous inability of the parties to cooperate. Moreover, this court, despite disagreeing with *Thelen*, has consistently applied it.

Plaintiff points to defendant's use of a Form VW Retainer Agreement, and that the firm's website remained active, as indications that the parties did not intend to dissolve. However, defendant testified credibly that this was because plaintiff was adamant that it look to the outside world like the firm was not dissolving. The acrimony and stalemate over how to divide the fees created a situation where Mr. Vacarro, who, at least in court, appeared gentler than Mr. White, felt bullied into signing up new cases under the firm's retainer agreement. This did not mean that the parties acted internally towards each other as if they were not dissolving. The communications between the parties demonstrate, by a preponderance, their intent to dissolve (see discussion of evidence from prior decisions, as well as defendant's Exhibit FFF [from Vaccaro to White, dated July 18, 2023 concerning separating the use of IT products]; defendant's Exhibit U, [email dated March 29, 2023, in which White writes "it is clear to me that we need to dissolve our firm and separate our practices entirely"]; defendant's Exhibit X, [April 7, 2023 email from White to Vacarro containing "partnership dissolution proposal"]; defendant's Exhibit KKKK in which White writes to a client, on July 21, 2023, that "Our law firm, Vaccaro & White, LLP, is dissolving").

<u>The Lease</u>:

Nor does defendant's equivocation on whether he wanted to take over the lease of the partnership mean that he did not intend to dissolve the partnership. As plaintiff admits, "Defendant began setting up his new law practice within VW's office in April [of 2023]." This is consistent with a desire to dissolve.

<u>The Affiliation Term Sheet</u>:

At the time of the PI hearing, the court was under the impression that Mr. White was arguing for his 50% share of fees because of the 2019 "Agreement of Partnership" that gave each party a 50% "Partnership Interest." However, at the current trial, Mr. White's attorney made clear that the 2019 Agreement did not address fees and that Mr. White was relying on an earlier agreement, the "Affiliation Term Sheet, dated October 15, 2012," to support his argument that he is entitled to 50% of all fees. The 2019 Agreement contained no provision concerning the allocation of fees between the partners. Therefore, according to White, the 2012 agreement controls, because neither party has taken the position that the 2019 Agreement superseded the 2012 Agreement.

The 2012 Affiliation Agreement does not help plaintiff. This agreement [Pl Ex A], as both sides testified, was in contemplation of the parties deciding to fully affiliate. The 2012 Affiliation Agreement splits cases into two types. Legacy cases are those that each side brought to the joint venture. The other type was "new matters" (See Section 2[c]). The agreement also contemplated that the parties would either fully affiliate or decide to go their separate ways if the initial affiliation period did not work out. The agreement provided for several scenarios and appears to have been a temporary agreement until the parties decided to fully affiliate. Paragraph 4 of the Affiliation Term Sheet agreement provides as follows:

> Full Affiliation
> a. If parties decide to fully affiliate, they grant each other 50% interest in the net fees from all Legacy matters, going forward <u>and in event of subsequent disaffiliation</u>.

Plaintiff contends this reflects the parties' agreement to split fees 50/50 in the event they disassociated.

However, this section only applies to "Legacy cases" and Legacy cases were only those cases pending when the parties entered into the 2012 Agreement. Why else would the parties have made a distinction between Legacy cases and "New Matters"? Moreover, the parties expressly provided for how to split fees on New Matters in the event of disassociation. Section 5b (ii) of the 2012 agreement, entitled "Interest of Non Counsel of Record" states:

> "For New Matters retained by other party post-disaffiliation, non counsel of record party retained interest in net fees according to the following fee schedule:
>
> DISAFFILIATION FEE SCHEDULE

Stage of Lit. as of due date of disaffiliation	% of Net Fee to Non-Counsel of Record
Before Bill of Particulars Served	100%
After Bill of Particulars Served	25%
Note of Issue Filed	40%

> (Non-counsel of record party also receives, upon settlement, reimbursement of 50% share of expenses actually paid in during affiliation period)."

Nevertheless, even if the parties had agreed to a 50/50 split, it would be irrelevant. This is because the fee schedule violates the rule set forth in *In re Thelen*, 24 NY3d 16 (2014). As discussed at length in prior decisions in *Thelen*, the Court of Appeals determined, on public policy grounds, that a client's legal matter belongs to the client, not the lawyer (*In re Thelen LLP*, 24 N.Y.3d 16, 29 [2014]). *Thelen* thus held, in contingency fee cases, "the dissolved partnership is entitled only to the 'value' of its services" (*id.* at 29), and that a contingency fee case is not an asset of the partnership (see also *Parker Waichman, LLP v. Mauro,* 215 A.D.3d 869, 872 [2d Dep't 2023]; *Lamanna v. Compitiello*, 213 A.D.3d 833, 834, [2d Dep't 2023] ["When there is a fee dispute between the current and discharged attorneys for the plaintiff in an action to which a contingent fee retainer agreement applies, [t]he discharged attorney may elect to receive compensation immediately based on quantum meruit or on a contingent percentage fee based on his or her proportionate share of the work performed on the whole case"] [citations omitted]; *Gateway Intern., 360, LLC v. Richmond Capital Group, LLC*, No. 654636/2018, 2020 WL 3414975, at *1 [N.Y. Sup. Ct. June 22, 2020] [Generally, a client has an "unqualified right to terminate the attorney-client relationship at any time without any obligation other than to compensate the attorney for "the fair and reasonable value of the completed services"]). Given this context, the court will now turn to the various claims and counterclaims the parties have asserted.

PLAINTIFF'S CLAIMS

1. Dissolution

As both sides have sued for dissolution, the court grants that relief. Accordingly, the court adjudges, decrees and declares that the law firm of Vacarro and White LLP is dissolved.

2. Accounting

Plaintiff's second cause of action is for an accounting. Plaintiff did not address this claim in his post-trial brief. Presumably, plaintiff has what is necessary for the inquest from the discovery in this case and the accounting claim is now subsumed into that discovery and upcoming inquest. Plaintiff must alert the court should this assumption be inaccurate.

3. Breach of Fiduciary Duty

Plaintiff's third cause of action is for breach of fiduciary duty. "Dissolution terminates a partner's authority to act for the partnership except to the extent necessary to wind up partnership affairs" (*Metzger v. Goldstein*, 139 A.D.3d 918, 919 [2d Dep't 2016]). Thus, a partner who is engaged in winding up the partnership "continues to have fiduciary duties to the partnership and his or her copartners, but only with respect to winding up activities, such as to make good any outstanding engagements, to take and settle accounts, collect partnership property and the means and assets of the partnership, and generally to watch over the business for the benefit of all those interested" (*Rozof v Rozof*, 244 AD3d 1127, 1128 [2d Dep't 2025]).

"The dissolution of a partnership is the change in the relation of the partners caused by any partner ceasing to be associated in the carrying on as distinguished from the winding up of the business" (NY Partnership Law § 60). Thus, dissolution is distinct from termination.

In this legal context, the court will analyze those instances where plaintiff claims defendant breached his fiduciary duties to plaintiff. Notably, plaintiff does not argue that it was a breach of fiduciary duty for Vaccaro to sign a partnership agreement allocating fees 50/50 knowing that, if the firm dissolved, this arrangement would be unenforceable, and knowing that White was unaware of this circumstance.

-<u>Jump ball cases</u>

Plaintiff claims that defendant breached his fiduciary duty to plaintiff by creating the situation where the parties would literally grab the phone in an attempt to garner the new cases. Plaintiff ignores his own participation in the same chaos and his refusal to meet with defendant about an orderly fashion for doling out new cases. Eventually, the parties hired "Elizabeth," who, both sides agree, fairly distributed cases. Thus, to the extent this was a breach of fiduciary duty, the breach goes both ways and is a wash. As of March 29, 2023, it was not a breach of fiduciary duty to the firm for defendant to have kept cases for himself. This is because, as of that date, the firm was in dissolution such that defendant could have kept the cases for his own endeavors (see *Morris v. Crawford*, 304 A.D.2d 1018 [3rd Dep't 2003] [any solicitation of former partnership's clients occurred after date of dissolution, at which time there was no fiduciary duty owed]).

-<u>The Lease</u>

Also, to the extent that Mr. Vaccaro equivocated about terminating the lease, he only breached his winding up fiduciary duties to the extent that the "Good Guy" guaranty period extended longer than it would have otherwise. Mr. Vaccaro had to know that every minute he spent equivocating about whether or not to terminate would come out of the Partnership's pocket. However, plaintiff has no damages at this point for this breach because the landlord is not currently pursuing the partnership or the individual parties for anything. The case the landlord filed lays dormant. Only if and when the landlord obtains a judgment or settlement will plaintiff suffer damages. Accordingly, the court dismisses this aspect of the breach of fiduciary duty claim for failure to show damages without prejudice to plaintiff suing for indemnification should the situation where plaintiff must pay ever arise. Finally, nothing in the record supports that Mr. Vaccaro equivocated in bad faith.

-<u>The Website and Phone Lines</u>

Defendant does not deny (post-trial brief pg 6) that he took control of the firm's website without Plaintiff's consent and then directed web traffic from it to his new law firm from October 31 through November 21, 2023. This is a breach of fiduciary duty, because defendant cannot use firm resources to compete with his former firm partner. By the same token, to the extent plaintiff took control of the phone line and directed cases to himself, he breached his own fiduciary duties. The parties have leave to prove quantifiable damages stemming from either breach at the inquest.

-<u>Email to Community</u>

Plaintiff contends that it was a breach of fiduciary duty for Mr. Vaccaro to have sent an email to the safe streets community (EDOC 112) complaining about Mr. White's actions and giving his view of the dispute. While this may have partially been a tactic to beat White out for business in this niche area of personal injury law, defendant did not owe plaintiff a fiduciary duty not to compete with him at this juncture. Nor should plaintiff have expected otherwise given the litigation he filed and the extreme acrimony between the parties (*cf. Pappas v Tzolis*, 20 NY3d

228, 232 [the relationship between plaintiffs and Tzolis had become antagonistic, to the extent that plaintiffs could no longer reasonably regard Tzolis as trustworthy).

Thus, sending this email does not fit under a breach of fiduciary duty theory. Meanwhile, plaintiff has not sued defendant for unfair competition. Therefore, the court will not consider unfair competition. In any event, plaintiff has not demonstrated he suffered any harm from defendant having sent this email.

4. Breach of Contract

The fourth cause of action for breach of contract is subsumed into the inquest. The finder of fact is free to use the allocation formula from the parties' 2012 agreement, as Mr. Vaccaro advocates, if they find that formula is a fair estimate of reasonable value of the services each side provided.

DEFENDANT'S COUNTERCLAIMS

1. Declaratory Relief

As set forth herein and in the court's prior decisions, the court grants defendant's first and second counterclaims seeking declaratory relief that: (1) the firm is dissolved as of March 2023; and (2) that the allocation is by quantum meruit representing the reasonable value of each sides' services. Accordingly, it is Adjudged, Decreed and Declared that the law firm of Vaccaro and White LLP is dissolved as of March 29, 2023, and that the fees are to be allocated quantum meruit per *Thelen*.

Defendant's third counterclaim seeks a declaratory judgment that: (1) White's refusal to accept the changes of counsel violated his obligation to put the interests of the clients' before his own; (2) such refusal constitutes grounds to find both he and V&W have been discharged for cause; and (3) plaintiff has forfeited any claim to a share of the fees due from those cases. This counterclaim is dismissed. Defendant has no proof that White's refusal interfered with defendant's ability to represent his clients. Nor does he cite a single case where a forfeit of all fees is an appropriate penalty in any event. Thus, the court dismisses this counterclaim for declaratory relief. Accordingly, it is Adjudged, Decreed, and Declared that White did NOT sacrifice all right to recover fees in this action because he refused to accept change of counsel.

2. Misuse of Funds

Defendant's fourth counterclaim is for misuse of firm funds. To the extent either side has asserted claims against the other for misuse of funds, the court dismisses these claims for lack of proof. Defendant did not address his fourth counterclaim in his post-trial brief.

The court has considered the parties' remaining contentions and finds them unavailing.

Accordingly, it is

ORDERED THAT the court dismisses the following claims:

1. All claims for breach of fiduciary duty (except for each sides' claims concerning the appropriation of the firm's website and phone lines which is sent to an inquest for each side to prove damages from this conduct); and
2. Defendant's fourth counterclaim for misuse of firm funds; and
3. Defendant's third counterclaim for declaratory relief; and it is further

ADJUDGED, DECREED AND DECLARED that Adam White did NOT sacrifice all right to recover fees in this action because he refused to accept change of counsel; and it is further

ORDERED that the court grants both parties' request for dissolution; and it is further

ORDERED, ADJUDGED, and DECREED that the law firm Vacarro & White LLP is dissolved; and it is further

ORDERED, ADJUDGED, and DECREED that the date of dissolution of Vacarro & White LLP is March 29, 2023; and it is further

ORDERED, ADJUDGED, and DECREED that the proper allocation of contingency fees is in accordance with the decision of the Court of Appeals in *In re Thelen LLP*, 24 N.Y.3d 16, 29 (2014), meaning that the allocation will be on a quantum meruit basis equivalent to the reasonable value of the firm's services on the case prior to dissolution and the reasonable value of each attorney's services post dissolution (in the event they both worked on the case after March 29, 2023); and it is further

ORDERED that the court refers the below issues to the Special Referee Clerk for an inquest. The Special Referee shall hear and report with recommendations as to the damages inquest:

1. Both parties' quantifiable damages, if any, relating to the Website and Phone Lines fiduciary duty breaches;

2. The proper allocation of contingency fees each party is owed, on a quantum meruit basis in accordance with *In re Thelen LLP*, 24 N.Y.3d 16, 29 (2014).

And it is further

ORDERED that the powers of the Special Referee shall not be limited beyond the limitations set forth in the CPLR; and it is further

ORDERED that this matter is hereby referred to the Special Referee Clerk for placement at the earliest possible date upon the calendar of the Special Referees Part (Part SRP), which, in accordance with the Rules of that Part (which are posted on the website of this court), shall assign this matter at the initial appearance to an available JHO/Special Referee to hear and report as specified above; and it is further

ORDERED that counsel shall immediately consult one another and counsel for plaintiff/petitioner shall, within 5 days from the date of this Order, submit to the Special Referee Clerk by e-mail an Information Sheet (accessible at the "**References**" link on the court's website) containing all the information called for therein and that, as soon as practical thereafter, the Special Referee Clerk shall advise counsel for the parties of the date fixed for the appearance of the matter in the Special Referees Part; and it is further

ORDERED that the parties shall appear for the reference hearing, including with all witnesses and evidence they seek to present, and shall be ready to proceed with the hearing, on the date fixed by the Special Referee Clerk for the initial appearance in the Special Referees Part, subject only to any adjournment that may be authorized by the Special Referees Part in accordance with the Rules of that Part, unless directed otherwise by the Special Referee Part; and it is further

ORDERED that, except as otherwise directed by the assigned JHO/Special Referee for good cause shown, the trial of the issue(s) specified above shall proceed from day to day until completion and counsel must arrange their schedules and those of their witnesses accordingly; and it is further

ORDERED that counsel shall file memoranda or other documents directed to the assigned JHO/Special Referee in accordance with the Uniform Rules of the Judicial Hearing Officers and the Special Referees (available at the "References" link on the court's website) by filing same with the New York State Courts Electronic Filing System (see Rule 2 of the Uniform Rules); and it is further

ORDERED that any motion to confirm or disaffirm the Report of the JHO/Special Referee shall be made within the time and in the manner specified in CPLR 4403 and Section 202.44 of the Uniform Rules for the Trial Courts; and it is further

ORDERED that no additional discovery is needed or permitted in advance of the inquest, and it is further

ORDERED that the presence of a court officer is required at the inquest; and it is further

RECOMMENDED that the parties serve the members of the Appellate Panel on the pending appeal with copies of this decision after trial to complete the record on appeal.

DATE: 6/22/2026 **MELISSA A. CRANE, JSC**

Check One:	[ ]	**Case Disposed**	[x]	**Non-Final Disposition**
Check if Appropriate:	[x]	**Other (Specify**	DECISION AFTER TRIAL **)**	