



Supreme Court, New York County, New York.
Part 54.

Randy SCHINDLER, Individually, and in his capacity as a member of Niche Media Holdings, LLC, and through Niche Media Holdings, LLC, in his capacity as a member of Hamptons Media, LLC,
Plaintiff,

v.

NICHE MEDIA HOLDINGS, LLC, Hamptons Media, LLC, and Jason Binn, Defendants.

Index No. 108959/03.

Sept. 25, 2003.

Member of limited liability company (LLC) brought suit asserting numerous causes of action against another member. Plaintiff moved to enjoin defendant from using company funds for his person defense and to consolidate case with another pending in the same court. The Supreme Court, New York County, [Shirley Werner Kornreich, J.](#), held that: (1) plaintiff was not entitled to injunction; (2) consolidation was not warranted; (3) plaintiff was not entitled to priority of discovery; and (4) plaintiff was not entitled to open commission to obtain document and deposition discovery.

Motions denied.

West Headnotes

[1] Corporations 101 ↪202

101 Corporations

101IX Members and Stockholders

101IX(C) Suing or Defending on Behalf of Corporation

101k202 k. Right to Sue or Defend in General. **Most Cited Cases**

Limited Liability Company Law (LLCL) provides no right to bring derivative action. [McKinney's Limited Liability Company Law § 101](#) et seq.

[2] Corporations 101 ↪614(3)

101 Corporations

101XV Dissolution and Forfeiture of Franchise

101k611 Proceedings to Enforce Dissolution or Forfeiture

101k614 By Members or Officers of the Corporation

101k614(3) k. Parties. **Most Cited**

Cases

Limited Liability Company Law (LLCL) provided no right to bring derivative action seeking corporate dissolution. [McKinney's Limited Liability Company Law § 101](#) et seq.

[3] Corporations 101 ↪614(1)

101 Corporations

101XV Dissolution and Forfeiture of Franchise

101k611 Proceedings to Enforce Dissolution or Forfeiture

101k614 By Members or Officers of the Corporation

101k614(1) k. In General. **Most Cited**

Cases

Judicial dissolution of limited liability company will be ordered only where complaining member can show that business sought to be dissolved is unable to function as intended, or else that it is failing financially. [McKinney's Limited Liability Company Law § 702](#).

[4] Corporations 101 ↪592

101 Corporations

101XV Dissolution and Forfeiture of Franchise

101k592 k. Causes and Grounds in General.

Most Cited Cases

Judicial dissolution of limited liability company (LLC) was not warranted, absent allegation that company was unable to carry on its business in accordance with its articles of organization or operating agreement, or that there was any internal “deadlock” impeding its smooth operation; in fact,

company published three very successful magazines and was quite profitable. [McKinney's Limited Liability Company Law § 702](#).

[5] Corporations 101 308(1)

101 Corporations

101X Officers and Agents

101X(C) Rights, Duties, and Liabilities as to Corporation and Its Members

101k308 Compensation

101k308(1) k. In General. [Most Cited](#)

Cases

The law and limited liability company's (LLC) operating agreement allowed chief executive officer's (CEO) legal expenses to be paid by the company, absent judgment or other "final adjudication" establishing that CEO acted in bad faith, was dishonest, or personally gained financial profit to which he was not entitled. [McKinney's Limited Liability Company Law § 420](#).

[6] Injunction 212 72

212 Injunction

212II Subjects of Protection and Relief

212II(D) Corporate Franchises, Management, and Dealings

212k72 k. Disposition of or Dealings with Corporate Property. [Most Cited Cases](#)

Member of limited liability company (LLC) seeking to enjoin another member from using company funds for his personal defense would not suffer irreparable in absence of injunction, despite claim that company paying other member's defense costs gave him unfair advantage.

[7] Injunction 212 72

212 Injunction

212II Subjects of Protection and Relief

212II(D) Corporate Franchises, Management, and Dealings

212k72 k. Disposition of or Dealings with Corporate Property. [Most Cited Cases](#)

No equities favored member of limited liability

company (LLC) seeking to enjoin another member from using company funds for his personal defense; operating agreement and Limited Liability Company Law (LLCL) permitted payment of other member's attorney's fees, and it would have been wasteful to require other member and company defendants to duplicate each other's defenses against a complaint whose allegations respecting the various defendants were jumbled together, with the result that it is not always clear which defendant is being targeted. [McKinney's Limited Liability Company Law § 420](#).

[8] Action 13 57(4)

13 Action

13III Joinder, Splitting, Consolidation, and Severance

13k54 Consolidation of Actions

13k57 Actions Which May Be Consolidated

13k57(4) k. Circumstances Precluding Consolidation in General; Prejudice. [Most Cited Cases](#)

Trial court would not consolidate action with related case, where it was not clear who plaintiffs and who defendants were, and resolution of underlying dispute would most likely be dispositive of related case.

[9] Pretrial Procedure 307A 25

307A Pretrial Procedure

307AII Depositions and Discovery

307AII(A) Discovery in General

307Ak25 k. Sequence and Timing; Condition of Cause. [Most Cited Cases](#)

Plaintiff was not entitled to priority of discovery on ground that he would soon move to have temporary receiver appointed for his limited liability company (LLC), where he had no grounds for seeking temporary receiver.

[10] Pretrial Procedure 307A 25

307A Pretrial Procedure

307AII Depositions and Discovery**307AII(A)** Discovery in General

307Ak25 k. Sequence and Timing; Condition of Cause. [Most Cited Cases](#)

Plaintiff alleging breach of fiduciary duty was not entitled to priority of discovery, where facts relating to defendant's alleged breach of his fiduciary duty were not in defendant's exclusive possession.

[11] Pretrial Procedure 307A  **25****307A** Pretrial Procedure**307AII** Depositions and Discovery**307AII(A)** Discovery in General

307Ak25 k. Sequence and Timing; Condition of Cause. [Most Cited Cases](#)

Mere allegation of breach of fiduciary duty is not sufficient to upset defendant's right to priority of discovery.

[12] Pretrial Procedure 307A  **94****307A** Pretrial Procedure**307AII** Depositions and Discovery**307AII(C)** Discovery Depositions**307AII(C)1** In General

307Ak94 k. Actions and Proceedings in Which Depositions May Be Taken. [Most Cited Cases](#)

Pretrial Procedure 307A  **337****307A** Pretrial Procedure**307AII** Depositions and Discovery

307AII(E) Production of Documents and Things and Entry on Land

307AII(E)1 In General

307Ak337 k. Grounds for Refusal in General. [Most Cited Cases](#)

Member of limited liability company (LLC) was not entitled to open commission to obtain document and deposition discovery, where member was guilty of discovery abuses. [McKinney's CPLR 3108, 3111](#).

****783** Judd Burstein, P.C., New York City, for plaintiff.

Gerald B. Lefcourt, P.C., New York City (Sheryl E. Riech of counsel), for Niche Media Holdings, LLC, defendant.

Stanley W. Kallman, P.C., New York City, for Jason Binn, defendant.

DECISION and ORDER**SHIRLEY WERNER KORNREICH, J.**

***714** Before the Court are two applications by Randy Schindler (hereinafter, “plaintiff” or “Schindler”), the first for injunctive relief and the second for, *inter alia*, consolidation of the instant action with *Schindler v. Sokol & Sokol*, which is also pending in the Supreme Court, New York County under Index # 115087/03. The two motions are consolidated herein for unitary disposition.

Defendant Niche Media Holdings, LLC (“Niche”) was formed in or around 1999 to manage the affairs of Hamptons Media, LLC (“Hamptons”) and other magazine publishing enterprises. According to its Operating Agreement, Niche was formed for the general purpose of conducting “any and all lawful activities.” Operating Agreement, ¶ 2.4, annexed to plaintiff's motion as Exhibit B. Specifically, however, it was formed to own and publish, through subsidiaries, the magazines Hamptons, Gotham and LA Confidential. Niche is the exclusive member of Hamptons, which publishes Hamptons Magazine. Niche has several members, including Schindler (a 33.3% owner) and Binn (a 35.7% owner). Schindler is Chairman of the Board of Niche, while Binn is Niche's Chief Executive Officer.

According to the complaint, the current dispute **FNI** between Schindler and Binn originated in early 2003, when, through his ally, Niche attorney Golieb, Binn allegedly increased his own commissions without increasing Binn's commensurately, withheld commissions from Schindler and canceled ****784** Schindler's corporate credit card because he was overdrawn against his commissions, and withheld Schindler's promised \$300 weekly advance to

offset the “personal” expenses that Schindler had charged to his corporate credit card. Schindler was also accused of rarely showing up for work. In response, Schindler accused Binn of, *inter alia*, misappropriating company assets to pay for personal furnishings and expenses. Schindler demanded, *inter alia*, an “accounting” of all company monies paid to Binn, as well as of the various sums that had been (wrongfully, he *715 insisted) withheld from himself. Other quarrels also arose, in which Schindler once again accused Binn of appropriating more than his fair share of money, services and perks from Niche. Schindler began demanding copies of all communications between Binn and Golieb, as well as documentation regarding Binn's commissions, Binn's compliance with company obligations, and Binn's “apparent misuse of company funds.” Schindler has formally demanded that Niche's Board of Managers bring suit against Binn for misappropriation of company assets. Neither Binn, Niche nor Hamptons has supplied an accounting, nor have the companies commenced suit against Binn. Schindler was apparently terminated for cause on June 5, 2003.

FN1. In 2000, Schindler brought a suit against Binn in Suffolk County, seeking, *inter alia*, dissolution of Hamptons, an accounting, and damages because of an alleged breach of fiduciary duty on the part of Binn and other members of the board of Hamptons Magazine. *Schindler v. Hamptons Magazine, LLC*, Index No. 00-17882, Supreme Court, Suffolk County. That action was ultimately withdrawn on stipulation of the parties, with Schindler retracting as without factual basis certain defamatory allegations against Binn which have reappeared in the instant lawsuit.

Schindler's seven causes of action are as follows: (1) a “derivative” claim against Binn for breach of fiduciary duty (\$15 million in compensatory and punitive damages are sought); (2) a “personal” claim against Binn for \$15 million for fraud perpet-

rated against Schindler; (3) a “derivative” claim against Binn for \$15 million in compensatory and punitive damages for Binn's alleged waste, misconduct and theft of company assets; (4) a “personal” and “derivative” demand for “an accounting of Binn's use of any and all company funds;” (5) a “personal” and “derivative” demand, said to be against Binn, for dissolution of the company defendants, since “[l]iquidation of the Company Defendants is the only feasible means whereby the Companies' members other than Binn may reasonably expect to obtain a fair return on their investment;” (6) an individual and derivative claim for \$3 million for Binn's breach of his employment contract; and (7) a permanent injunction barring Binn from serving as Niche's CEO.

A. Schindler's application to enjoin Binn from using company funds for his personal defense in this action:

In his first motion, plaintiff seeks a preliminary injunction barring Binn “from using company funds for his personal defense” in this action. Firstly, Schindler insists that he has an “overwhelming likelihood of success on the merits,” since it is well settled that a corporation owner cannot pay his counsel fees out of corporate funds “in the context of a dissolution proceeding.” Secondly, Schindler claims that without the injunction he will suffer irreparable injury, in that Binn will have an unfair advantage over Schindler if his legal fees are paid out of company funds. Thirdly, according to Schindler, the equities favor him because he “has suffered severe financial hardship as a result of Binn's improper efforts to oust Schindler from Niche....”

*716 Under **CPLR § 6301**, a plaintiff may obtain a preliminary injunction if he can demonstrate (1) the likelihood of success on the merits of the underlying cause of action; (2) irreparable injury in the absence of the preliminary injunction; and (3) a balancing of the equities in plaintiff's favor.

1. Likelihood of success on the merits:

[1][2] Schindler has essentially no likelihood of success on the merits of either ****785** his underlying cause of action for dissolution *or* his application to enjoin the companies from paying Binn's legal fees in his defense against the dissolution cause of action. Schindler relies upon rules governing derivative actions seeking corporate dissolution where, *inter alia*, the corporation's shareholders are deadlocked, or the minority shareholders are pitted against the majority. See **BCL §§ 1104 and 1104-a**. However, both Niche and Hamptons are organized under New York's Limited Liability Company Law (the "LLCL"). That legislation provides no right to bring a derivative action. The LLCL as originally drafted contained a provision (Article IX) allowing derivative lawsuits, but "[b]ecause some legislators raised questions as to the derivative rights provisions, to avoid jeopardizing passage of the Law, Article IX was excised.... The battle to include derivative rights in the LLCL may be fought at some future date." McKinney's, *Cons. Laws of New York Annotated*, Book 32A, Limited Liability Company Law, 2003 Pamphlet, Practice Commentary 1.F., p. 6. Thus, Schindler's Fifth Cause of Action—the only one seeking dissolution of the company defendants—is subject to dismissal as unauthorized by statute—as are the other causes of action insofar as they are asserted as "derivative."

[3][4] According to **§ 702 of the LLCL**, judicial dissolution of a limited liability company is only warranted when "it is not reasonably practicable to carry on the business in conformity with the articles of organization or operating agreement." While this standard has never been construed in the case law, the Court interprets it to mean that judicial dissolution will be ordered only where the complaining member can show that the business sought to be dissolved is unable to function as intended, or else that it is failing financially. Schindler has nowhere so much as alleged that Niche is unable to carry on its business in accordance with its articles of organization or operating agreement, or that there is any

internal "deadlock" impeding its smooth operation. In addition, the Court has examined Niche's financial statement *in camera*, and it shows—as even Schindler admits—that Niche publishes ***717** three very successful magazines and is quite profitable.^{FN2} Niche, and Hamptons, which Niche owns, are therefore flourishing, and both are being conducted in conformity with their articles of organization.^{FN3}

FN2. The Court rejects as unsubstantiated Schindler's suggestion that the companies' financial reports were drafted based upon false information given by Binn.

FN3. Even using the standards for judicial dissolution set out in the BCL, Schindler's complaint falls short. No "deadlock" among shareholders is alleged (**BCL § 1104**), and this seems less a case of "looting" by Binn than one of personal animosity between Binn and Schindler in which intemperate accusations have been exchanged (**BCL § 1104-a**). In any event, even assuming that Binn is improperly withholding from Schindler sums due to Schindler, it is by no means clear on this record that liquidation of the businesses "is the only feasible means whereby the petitioners may reasonably expect to obtain a fair return on their investment" *and* that liquidation "is reasonably necessary for the protection of the rights and interests of any substantial number of shareholders or of the petitioners" (**BCL § 1104-a[b][1],[2]**).

[5] Finally, the Niche Operating Agreement states that it "will indemnify and hold harmless each Manager from and against all losses, liabilities, claims, demands and expenses, including reasonable attorney's fees and expenses to the maximum extent permitted under the New York [Limited Liability Company] Act." Plaintiff's Exhibit B, ¶ 4.7, ¶ 1.1(r). According ****786** to **§ 420 of the New York Limited Liability Company Act**:

Subject to the standards and restrictions, if any, set forth in the operating agreement, a limited liability company may, and shall have the power to, indemnify and hold harmless, and advance expenses to, any member, manager or other person, ... from and against any and all claims and demands whatsoever, provided, however, that no indemnification may be made to or on behalf of any member, manager or other person if a judgment or other final adjudication adverse to such member, manager or other person establishes (a) that his or her acts were committed in bad faith or were the result of active and deliberate dishonesty and were material to the cause of action so adjudicated or (b) that he or she personally gained in fact a financial profit or other advantage to which he or she was not legally entitled.

There has been no judgment or other “final adjudication” establishing that Binn acted in bad faith, was dishonest, or *718 personally gained a financial profit to which he was not entitled in his capacity as Niche's CEO.

In short, the law and Niche's Operating Agreement provide that Binn's legal expenses may be paid by the company. Schindler's argument that none of Binn's expenses may be paid by Niche because one of his seven causes of action seeks dissolution of Niche and Hamptons would, if accepted, create the unworkable dilemma that Binn *could* have his defense paid for by Niche as to six causes of action, but not as to the seventh. However, the dilemma is not presented, since Schindler may not under the LLCL sue derivatively for the defendant companies' dissolution, and the defendants are accordingly not bound by the rules governing derivative lawsuits for judicial dissolution of *corporations*.

2. Irreparable injury:

[6] The Court is not persuaded that Schindler will suffer irreparable injury if Niche pays for Binn's defense. By Schindler's reasoning, the Court would have to make certain that in every case before it the litigants have equal financial resources, or else

somehow divest the richer party of assets to diminish his “unfair advantage.” Clearly, counsel's competence is not dependent upon who pays him/her.

3. *Balancing of the equities:*

[7] There are no equities that favor the plaintiff. Both Niche's Operating Agreement and the LLCL permit the payment of Binn's attorney's fees. In contrast, there is no law or contract provision that favors barring company aid to Binn in his legal defense. Moreover, it would be wasteful to require Binn and the company defendants to duplicate each other's defenses against a complaint whose allegations respecting the various defendants are jumbled together, with the result that it is not always clear which defendant is being targeted. Finally, although Schindler complains that he has been impoverished by Binn's, *inter alia*, taking more than his fair share of company monies, it appears from Schindler's own pleading that Binn et al. have registered similar complaints against Schindler. Accordingly, as between plunderer and plundered, it cannot be said at this stage of the proceedings where the equities lie.

Plaintiff's motion for a preliminary injunction is therefore denied, and the existing TRO is vacated. The Court declines to address plaintiff's accusation that defendants violated the TRO while it was in existence.

****787 *719 B. Schindler's application to, *inter alia*, consolidate the instant case with Schindler v. Sokol & Sokol, Index No. 115087/03, pending in Supreme Court, New York County:**

On August 22, 2003, Schindler served a First Amended Verified Complaint on the defendants herein, in which he elaborated on a plot allegedly contrived by Binn-with the help of Niche attorney Golieb, accountant Brad Sokol, Niche Chief Operating Officer Caryn Whitman, and Modern Luxury magazine's principal Michael Kong-in which Niche's true financial condition was concealed from

Schindler preparatory to a lucrative (for Binn) merger of Niche with Modern Luxury magazine.^{FN4}

FN4. This planned merger ultimately fell through.

Shortly after amending his complaint in the instant action, Schindler served a First Amended Complaint in a second lawsuit that he had also commenced in Supreme Court, New York County, against Niche's accounting firm Sokol & Sokol, its accountant Brad Sokol, and its Chief Operating Officer Caryn Whitman (*Schindler v. Sokol & Sokol*, Supreme Court, New York County Index No. 115087/03). The "plot" surrounding the planned merger of Niche with Modern Luxury magazine is again outlined, and the defendants are charged with aiding and abetting Binn in his effort to defraud Schindler. The list of "parties" in the complaint in *Schindler v. Sokol & Sokol* includes John D. Howard, Charles Layton and Moreton Binn (collectively, "the Non-Party Niche Managers"), and in causes of action # 3, # 4 and # 5 Schindler, "derivatively," accuses these three individuals of breaching their fiduciary duties to the "Company Plaintiffs" in that they had allegedly aided Binn and his other accomplices in *their* breaches of their fiduciary duties to the "Company Plaintiffs." On behalf of the "Company Plaintiffs," Schindler demands \$15 million from each of these gentlemen. The Court notes that the caption in the second lawsuit reads: "RANDY SCHINDLER, individually, and in his capacity as a member of Niche Media Holdings, LLC, and through Niche Media Holdings, LLC, in his capacity as a member of Hamptons Media, LLC, Plaintiffs, against SOKOL & SOKOL, CPA, BRAD SOKOL, and CARYN WHITMAN, Defendants." There are no "Company Plaintiffs," and Howard, Layton and Moreton Binn are not named as defendants. It further does not appear that Howard, Layton and Moreton Binn have ever been served.

1. Motion to consolidate:

[8] Defendants in the instant action do not object to that branch of Schindler's application which seeks to consolidate the instant *720 lawsuit with *Schindler v. Sokol & Sokol*. However, the Court is loath to consolidate with the instant action another lawsuit where it is not clear who the plaintiffs and who the defendants are. In addition, as plaintiff's counsel admits in ¶ 10 of his affirmation in support of the instant Order to Show Cause, "the liability of defendants in the Sokol Action is predicated upon plaintiff proving his case in the Binn Action." Where, as here, resolution of the underlying dispute will most likely be dispositive of the related case, a motion for consolidation should be denied. See *Sokolow, Dunaud, Mercadier & Carreras LLP v. Lacher*, 299 A.D.2d 64, 747 N.Y.S.2d 441 (1st Dept. 2002) (order directing consolidation reversed and related action stayed pending resolution of underlying conflict).

2. Expedited discovery and priority of discovery:

[9] Schindler seeks "expedited discovery," suggesting that he just learned about Binn's "looting" of the defendant companies' **788 assets and that the companies' financial health will be damaged if Schindler does not intervene quickly. However, as noted above, Schindler has been making essentially the same accusations against Binn since at least 2000; and the instant action was more than four months old when Schindler made his motion for expedited discovery. In addition, according to Niche Chief Operating Officer Caryn Whitman, Niche is financially healthy, with four times the cash on hand than is required by current liabilities and a projected year-end profit of more than \$2 million.

Schindler additionally seeks *priority* of discovery on the ground that he will soon move to have a temporary receiver appointed for Niche. However, Schindler has no grounds for seeking a temporary receiver. In the case that he relies upon, *Rosan v. Vassell*, 257 A.D.2d 436, 683 N.Y.S.2d 516 (1st Dept. 1999), the Court noted that it was appointing a temporary receiver because there was "compelling

evidence of a struggle within the subject corporation threatening its continued viability.” As noted above, the company defendants at bar are not corporations, and there is no “struggle” within either Niche or Hamptons threatening the continued viability of either. Indeed, the only Niche manager who appears to be unhappy is Schindler.

[10][11] Schindler also claims entitlement to priority of discovery on the ground that such relief is traditionally granted in actions alleging a breach of a fiduciary relationship between the parties—usually arising from a business enterprise involving the parties—in which the pertinent facts are solely within the knowledge of the defendant. See **721Bel Geddes v. Zeiderman*, 228 A.D.2d 393, 644 N.Y.S.2d 729 (1st Dept.1996); *NOPA Realty Corp. v. Central Caterers, Inc.*, 91 A.D.2d 991, 457 N.Y.S.2d 851 (2d Dept., 1983). However, it is equally well established that the mere allegation of a breach of fiduciary duty is not sufficient to upset a defendant's right to priority. See *Hakim Consultants Ltd. v. Formosa Ltd.*, 175 A.D.2d 759, 573 N.Y.S.2d 510 (1st Dept.1991). Here it is clear that the facts relating to Binn's alleged breach of his fiduciary duty are *not* in Binn's exclusive possession. For example, Schindler has already acquired “critical” documents from nonparty Michael Kong, and he is seeking further discovery from nonparty John Golieb. Defendants also insist that all of the details of Binn's negotiations with Kong and Modern Luxury were known to all members of Niche's board, including plaintiff, so that plaintiff himself is in full possession of the facts underlying his claim.

3. Open Commission:

[12] Schindler seeks, pursuant to CPLR 3108 and 3111, an open commission to obtain document and deposition discovery from Michael Kong in Chicago, Illinois. Defendants oppose the application, as a sanction for plaintiff's prior discovery abuses, which they describe as follows:

On June 12, 2003, defendants were served with a

notice of subpoena to Michael Kong in Chicago, requiring him to produce certain documents at the New York office of plaintiff's counsel on June 10, 2003—two days earlier. Defendants' attorney wrote to plaintiff's counsel that the subpoena was invalid, *inter alia* because defendants had not received timely notice of it, because Kong had been given less than the 20 days notice required by CPLR 3106(b), and because a New York attorney had no authority to subpoena discovery from a nonparty in Chicago in that fashion. Defendants' attorney requested that the notice be withdrawn. Plaintiff's counsel ignored the request, apparently obtained the documents, and has not supplied**789 defendants with copies, even though Niche has offered to pay for photocopying. Schindler has not submitted a Reply Affidavit contradicting defendants' account of these transactions. The Court therefore denies Schindler's application for an Open Commission, for an order compelling Kong to turn over certain documents, and for an order compelling Kong to return an unidentified “transcript of the testimony subscribed by the witnesses.”

Accordingly, it is

ORDERED that plaintiff's application for a preliminary injunction restraining defendant Jason Binn from using the funds of Niche and/or Hamptons for his defense in this action is denied; and it is further

ORDERED that the existing *722 temporary restraining order is vacated and dissolved; and it is further

ORDERED that plaintiff's application to consolidate the instant action with *Schindler v. Sokol & Sokol*, Supreme Court, New York County, Index No. 115087/03, is denied; and it is further

ORDERED that plaintiff's application for priority of disclosure on an expedited basis is denied; and it is further

ORDERED that plaintiff's application for an Open Commission to obtain documents and to take a de-

position of nonparty Michael Kong, residing in Chicago, Illinois, is denied; and it is further

ORDERED that plaintiff's application to compel Michael Kong to produce documents and a transcript of unidentified testimony is denied.

The foregoing constitutes the Decision and Order of the Court.

N.Y.Sup.,2003.

Schindler v. Niche Media Holdings, LLC

1 Misc.3d 713, 772 N.Y.S.2d 781, 2003 N.Y. Slip Op. 23775

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