

**Supreme Court of the State of New York**  
**Appellate Division: Second Judicial Department**

D25077  
C/prt

\_\_\_\_\_AD3d\_\_\_\_\_

Argued - October 26, 2009

WILLIAM F. MASTRO, J.P.  
FRED T. SANTUCCI  
ARIEL E. BELEN  
CHERYL E. CHAMBERS, JJ.

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2009-00360

DECISION & ORDER

Joseph Sarachek, etc., et al., appellants,  
v Chaim Fortgang, et al., respondents,  
et al., defendants.

(Index No. 16785/08)

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The Dweck Law Firm, LLP, New York, N.Y. (Jack S. Dweck and Cory Frank of counsel), for appellants.

Kasowitz, Benson, Torres & Friedman LLP, New York, N.Y. (David M. Friedman and Howard M. Schub of counsel), for respondent Chaim Fortgang, and Friedman Kaplan Seiler & Adelman LLP, New York, N.Y. (Eric Seiler, Hallie B. Levin, and Jason C. Rubenstein of counsel), for respondents Silver Point Capital, L.P., Silver Point Europe, LLP, Silver Point Group, LLP, and Alvarez & Marsal Europe, Ltd. (one brief filed).

In an action, inter alia, to recover damages for breach of contract, the plaintiffs appeal, as limited by their brief, from so much of an order of the Supreme Court, Kings County (Partnow, J.), dated December 17, 2008, as granted the joint motion of the defendant Chaim Fortgang, and Silver Point Capital, L.P., Silver Point Europe, LLP, Silver Point Group, LLP, and Alvarez & Marsal Europe, Ltd., pursuant to CPLR 3211(a)(7) to dismiss the complaint insofar as asserted against them.

ORDERED that the order is affirmed insofar as appealed from, with one bill of costs.

Contrary to the plaintiffs' contention, they failed to allege a contractual relationship with the defendants Chaim Fortgang, Silver Point Capital, L.P., Silver Point Europe, LLP, Silver

Point Group, LLP, and Alvarez & Marsal Europe, Ltd. (hereinafter collectively the Silver Point defendants) (*see generally Hamlet at Willow Cr. Dev. Co., LLC v Northeast Land Dev. Corp.*, 64 AD3d 85, 104; *Berry v Tilley*, 41 AD3d 628). The plaintiffs' allegations that the Silver Point defendants purchased certain portions of debt owed by the defendants Galvex Capital, LLC, Galvex Holdings Limited, Galvex Estonia OU, Galvex Intertrade OU, Galvex Trade Limited, and Galvex Services OU (hereinafter collectively the Galvex defendants) was insufficient to state a cause of action that the Silver Point defendants assumed liability under an alleged pre-existing finder's fee agreement between the plaintiffs and the Galvex defendants (*see generally Schumacher v Richards Shear Co.*, 59 NY2d 239; *Matter of AT&S Transp., LLC v Odyssey Logistics & Tech. Corp.*, 22 AD3d 750; *Washington Mut. Bank, F.A. v SIB Mtge. Corp.*, 21 AD3d 953; *Fitzgerald v Fahnstock & Co.*, 286 AD2d 573; *Ladenburg Thalmann & Co. v Tim's Amusements*, 275 AD2d 243). Accordingly, the Supreme Court properly granted those branches of the motion of the Silver Point defendants which were to dismiss the plaintiffs' first and second causes of action to recover damages for breach of contract insofar as asserted against them.

Further, the Supreme Court properly granted that branch of the Silver Point defendants' motion which was to dismiss the cause of action to recover damages for unjust enrichment insofar as asserted against them (*see Lakeville Pace Mech. v Elmar Realty Corp.*, 276 AD2d 673, 676). Additionally, the Supreme Court properly granted those branches of the motion which were to dismiss the causes of action to recover damages for tortious interference (*see Allerland, LLC v 233 E. 18th St. Co., L.L.C.*, 19 AD3d 275, 277-278), breach of fiduciary duty (*see Ozelkan v Tyree Bros. Envtl. Servs., Inc.*, 29 AD3d 877, 879), conversion (*see Selinger Enters, Inc. v Cassuto*, 50 AD3d 766, 768), and promissory estoppel (*cf. Williams v Eason*, 49 AD3d 866, 868) insofar as asserted against the Silver Point defendants.

The plaintiffs' remaining contentions are without merit.

MASTRO, J.P., SANTUCCI, BELEN and CHAMBERS, JJ., concur.

ENTER:



James Edward Pelzer  
Clerk of the Court