NEW YORK SUPREME COURT - COUNTY OF BRONX
PART 32

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF BRONX
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BRYAN RILEY,

Index No. **814943/2021E**

Plaintiff,

Hon. **FIDEL E. GOMEZ**
Justice

- against -

MARSHA KNIGHT; TANGELA KNIGHT; 138 S&H REALTY CORPORATION (a New York Corporation); KIDS SPACE BRONX CHILDCARE, INC. (a New York Corporation); GEORGE T. PETERS, ESQ. (in both his personal and professional capacities); LAW OFFICE OF GEORGE T. PETERS, PLLC; A DREAM KID'S SPACE, LLC; A KID'S SPACE TO DREAM CHILDCARE, LLC; A KID'S SPACE TO DREAM, LLC; JOHN AND JANE DOES 1-20; AND BUSINESS ENTITIES A-K,

Defendants.
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The following papers numbered 1 to 3, read on this motion, noticed on 2/9/2022, and duly submitted as no. 1 on the Motion Calendar of 8/16/2022.

	PAPERS NUMBERED	
Notice of Motion - Order to Show Cause - Exhibits and Affidavits Annexed	1	
Answering Affidavit and Exhibits	2	
Replying Affidavit and Exhibits	3	

Defendant 138 S&H Realty Corporation's motion is decided in accordance with the Decision and Order annexed hereto.

Dated:
10/28/22

Hon. **FIDEL E. GOMEZ, A.J.S.C.**

1. CHECK ONE..... ☐ CASE DISPOSED X NON-FINAL DISPOSITION

2. MOTION IS..... ☐ GRANTED ☐ DENIED X GRANTED IN PART ☐ OTHER

3. CHECK IF APPROPRIATE..... ☐ SETTLE ORDER ☐ SUBMIT ORDER ☐ DO NOT POST
☐ FIDUCIARY APPOINTMENT ☐ REFEREE APPOINTMENT
X NEXT APPEARANCE DATE: **December 12, 2022, at 2:00 p.m.**

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF BRONX

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BRYAN RILEY,

Plaintiff,

DECISION AND ORDER

- against -

Index No. **814943/2021E**

MARSHA KNIGHT; TANGELA KNIGHT; 138 S&H REALTY CORPORATION (a New York Corporation); KIDS SPACE BRONX CHILDCARE, INC. (a New York Corporation); GEORGE T. PETERS, ESQ. (in both his personal and professional capacities); LAW OFFICE OF GEORGE T. PETERS, PLLC; A DREAM KID'S SPACE, LLC; A KID'S SPACE TO DREAM CHILDCARE, LLC; A KID'S SPACE TO DREAM, LLC; JOHN AND JANE DOES 1-20; AND BUSINESS ENTITIES A-K,

Defendants.

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Defendant 138 S&H Realty Corporation ("Defendant") moves for an order dismissing this action pursuant to CPLR 3211(a)(7). Plaintiff Bryan Riley ("Plaintiff") opposes.

For the reasons which follow, Defendant's motion is granted, in part.

BACKGROUND:

On November 1, 2021, Plaintiff commenced the instant action by filing a summons and verified complaint. The complaint alleges eleven causes of action: fraud and conspiracy to commit fraud, imposition of a constructive trust, accounting, unjust enrichment, breach of fiduciary duty, tortious interference, breach of duty of loyalty, breach of the covenant of good faith and fair dealing, conversion, receivership, attorney's fees, and punitive damages. The complaint is verified by Plaintiff.

The complaint alleges that Defendant Kids Space Bronx Childcare, Inc. ("Kids Space") was incorporated on or around November 19, 2019, and issued 200 shares (Compl. ¶ 13-14). Plaintiff alleges that he owns 100 shares, and Defendant Marsha Knight ("MK") owns the other

100 shares (Compl. ¶ 16). Plaintiff alleges that Defendant Tangela Knight ("TK") was named as president (Compl. ¶ 17), and Plaintiff was named as vice president of Kids Space (Compl. ¶ 18). Plaintiff alleges that a final draft shareholder's agreement was finalized in May 2021, but was never signed (Compl. ¶ 26-27).

The complaint alleges that on or around September 8, 2020, Kids Space entered into a lease agreement with Defendant to rent the premises located at 578-580 East 138th Street, Bronx, NY (the "Lease"). Plaintiff alleges that the Lease was entered into with the assistance of Defendant George T. Peters, Esq. ("Mr. Peters"), through his firm, Defendant Law Office of George T. Peters, PLLC ("GTP") (Compl. ¶ 19). Plaintiff alleges that the Lease was executed on behalf of Kids Space by MK, who was identified as president (Compl. ¶ 21). Plaintiff alleges that TK and Plaintiff executed personal guarantees for the Lease. Plaintiff alleges that he personally paid $84,000.00 for the security deposit (Compl. ¶ 22).

Plaintiff alleges that Kids Space began performing substantial work on the leasehold and spending thousands of dollars to build a state-of-the-art daycare center (Compl. ¶ 24). Plaintiff alleges that "[r]ent was not yet due, and possession was not yet granted, until such time as the landlord completed the 'landlord's work' and a certificate of occupancy was granted" (Compl. ¶ 25). Plaintiff alleges that it was his understanding that Kids Space was simply waiting for Defendant to obtain the TCO as required in the Lease to begin to operate (Compl. ¶ 38).[1]

The complaint alleges that MK and TK, along with the other defendants, conspired to deprive Plaintiff of his legal rights to the business opportunity of the daycare center (Compl. ¶ 29-30). Plaintiff alleges that, unbeknownst to him, on September 3, 2021, MK and Sholev Shoshani, Defendant's president, executed a lease termination agreement for the Lease (Compl. ¶ 31), with the assistance of Mr. Peters, through GTP (Compl. ¶ 33). The lease termination agreement states that the basis of the termination is because "Tenant has not taken possession or occupied the building" and "Landlord and Tenant now want to terminate the Lease by mutual agreement [sic] and consent" (Compl. ¶ 34). Plaintiff alleges that these statements are false. He alleges that Kids Space spent a considerable amount of time and money preparing the space and it was almost

[1] The Lease states that the Commencement Date of the Lease term "shall be that date that Landlord notifies Tenant that Landlord has, at its sole cost and expense, fully completed the work ('Landlord's Work') asset [sic] forth in Exhibit A, which is attached annexed hereto and made a part hereof, obtained a Temporary daycare use Group 4 Certificate of Occupation ('TCO') for the Building and delivered the Premises to Tenant as provided herein." (Compl., Exhibit B).

complete and ready to move in. He alleges that the location was furnished and ready to operate (Compl. ¶ 36). Plaintiff alleges that the security deposit in the amount of $84,000.00 was returned to him (Compl. ¶ 35). Plaintiff alleges that the lease termination was improper because it was not agreed to by the majority of the owners of Kids Space. Plaintiff alleges that MK's conduct was beyond her rights under the law or the terms they negotiated and under which they had operated (Compl. ¶ 48). Plaintiff alleges that based on MK's conduct, Plaintiff is an oppressed shareholder (Compl. ¶ 49).

The complaint alleges that Mr. Peters, through GTP, registered three similarly named limited liability companies, Defendants A Dream Kid's Space, LLC, A Kid's Space To Dream Childcare, LLC, and a Kid's Space To Dream, LLC (the "Replacement Companies") (Compl. ¶ 39). Plaintiff alleges that at the time these Replacement Companies were created, Mr. Peters and GTP had a fiduciary and legal responsibility to Plaintiff as shareholder of Kids Space, and that their actions, done in a conspiracy with MK and TK, are a breach of their responsibilities (Compl. ¶ 40). Plaintiff alleges that the Replacement Companies are owned by MK and/or TK (Compl. ¶ 41).

The complaint alleges that Plaintiff believes that Defendant entered into a new lease with MK and TK and/or the Replacement Companies "in an effort to kick Plaintiff out of the business" (Compl. ¶ 44).

The complaint alleges that on September 21, 2021, Plaintiff wrote a text message to Defendant's principal to inquire whether it had received a signoff on the sprinkler system which was the last step to obtain a TCO. Plaintiff alleges that he was told that he would receive a call back on September 24, 2021. Plaintiff alleges that the call never came (Compl. ¶ 45).

The complaint alleges that Plaintiff confronted TK about defendants' conspiracy to push Plaintiff out of the business dealings, and that TK stated that that was indeed their intent (Compl. ¶ 46-47).

On January 4, 2022, Defendant filed the instant motion. On August 16, 2022, the motion was marked fully submitted.

DISCUSSION:

Defendant moves to dismiss the complaint as alleged against it. The causes of action in the complaint that are applicable to Defendant are the first cause of action for fraud and conspiracy to

commit fraud, the (first) fourth cause of action for unjust enrichment, the tenth cause of action for attorney's fees and the eleventh cause of action for punitive damages.

First Cause of Action (Fraud and Conspiracy to Commit Fraud):

Defendant argues that the complaint fails to state a cause of action for fraud or conspiracy to commit fraud. Defendant argues that the complaint does not allege that Defendant made any misrepresentations to Plaintiff. Defendant argues that the statements made in the lease termination agreement were not made to Plaintiff. As such, Defendant argues that Plaintiff cannot allege knowledge of falsity, an intent to induce reliance thereon, justifiable reliance or resulting damages.

Defendant also argues that Plaintiff has not sufficiently pleaded that Defendant was involved in a conspiracy with the alleged misrepresentation made to the Plaintiff by other defendants. Defendant argues that bare conclusory allegations of conspiracy are insufficient.

In opposition, Plaintiff argues that he has sufficiently pleaded a scheme whereby the co-defendants fraudulently created the Replacement Companies for the purpose of replacing Kids Space, and Defendant assisted, conspired with, and aided and abetted the co-defendants by signing the lease termination upon false reasons and then resigning a lease agreement to allow one of the Replacement Companies to be present in the leasehold, to Plaintiff's detriment. In support, Plaintiff cites paragraphs 19, 29-34, 36-48, and 54-61 of the complaint. In referring to paragraphs 45 and 46 of the complaint, which make allegations regarding Defendant's failure to return Plaintiff's call, Plaintiff also appears to argue that Defendant concealed this alleged fraud.

In reply, Defendant argues that Plaintiff's allegations that Defendant committed fraud by failing to return a phone call and that the call was never returned because defendants had conspired to push Plaintiff out of the business dealings are speculative. Defendant also argues that Plaintiff has not alleged a material misrepresentation of fact, justifiable reliance, or damages. Defendant argues that Plaintiff could not have been damaged by Defendant's failure to return a call if the alleged conspiracy had already occurred.

"The elements of a cause of action to recover damages for fraud are (1) a misrepresentation or a material omission of fact which was false, (2) knowledge of its falsity, (3) an intent to induce reliance, (4) justifiable reliance by the plaintiff, and (5) damages" (*Minico Insurance Agency, LLC v AJP Contracting Corp.*, 166 AD3d 605, 607 [2d Dept 2018]; *Nerey v Greenpoint Mortg. Funding, Inc.*, 144 AD3d 646, 647 [2d Dept 2016]; *Gosmile, Inc. v Levine*, 81 AD3d 77, 81 [1st

Dept 2010 ["To state a claim for fraudulent inducement, there must be a knowing misrepresentation of material present fact, which is intended to deceive another party and induce that party to act on it, resulting in injury"]).

CPLR 3016(b) states that: "Where a cause of action or defense is based upon misrepresentation, fraud, mistake, willful default, breach of trust or undue influence, the circumstances constituting the wrong shall be stated in detail". However, "[a]lthough under section 3016(b) the complaint must sufficiently detail the allegedly fraudulent conduct, that requirement should not be confused with unassailable proof of fraud. Necessarily, then, section 3016(b) may be met when the facts are sufficient to permit a reasonable inference of the alleged conduct" (*Pludeman v Northern Leasing Systems, Inc.*, 10 NY3d 486, 492 [2008]; *Minico Insurance Agency, LLC* at 607-608).

Here, the complaint alleges two misrepresentations and an omission of fact as against Defendant. The two alleged misrepresentations are the two statements made in the lease termination agreement. The complaint states that: "As set forth in the lease termination agreement, the basis thereof was because 'Tenant has not taken possession or occupied the building' and 'Landlord and Tenant now want to terminate the Lease by mutual agreement [sic] and consent.'" (Compl. ¶ 34). It is uncontested that these statements were not made to Plaintiff. As such, these statements cannot serve as the basis of Plaintiff's cause of action for fraud. Since these statements were not made to Plaintiff, Plaintiff cannot allege or demonstrate that Defendant intended to induce reliance or that Plaintiff justifiably relied on these statements. (*See, i.e., Pasternack v Laboratory Corp. of America Holdings*, 27 NY3d 817, 829 [2016] ["Indeed, this Court has stated on a number of occasions that a fraud claim requires the plaintiff to have relied upon a misrepresentation by a defendant to his or her detriment. This view is both consistent with other rules governing fraud claims, and logical insofar as the tort of frauds is intended to protect a party from being induced to act or refrain from acting based on false representations – a situation which does not occur, where, as here, the misrepresentations were not communicated to, or relied on, by plaintiff."]).

The alleged omission of fact is found in paragraphs 45 and 46 of the complaint. The complaint alleges that: "On September 21, 2021, Plaintiff wrote via text message to the principal of 138 S&H Realty to inquire whether the landlord had received a signoff on the sprinkler system which was the last step to obtain a TCO. After advising that it was a Jewish Holiday, Plaintiff was advised that he would receive a telephone call back on the 24th of September – that call never

occurred" (Compl. ¶ 45). Plaintiff further alleges that: "Upon information, the call was never returned as the Defendants had all conspired illegally to push Plaintiff out of the business dealings" (Compl. ¶ 46). These allegations cannot serve as the basis for Plaintiff's cause of action for fraud. Even if the mere allegation that Defendant did not return a phone call could amount to a misrepresentation or an omission of material fact to Plaintiff, Plaintiff cannot allege or demonstrate that he has justifiably relied on the omission to his detriment. The omission is alleged to have occurred on September 21, 2021 (Compl. ¶ 45). However, the harm Plaintiff alleges, the termination of the Lease, is alleged to have occurred on September 3, 2021 (Compl. ¶ 31). Plaintiff cannot allege that he relied on the alleged omission made on September 21, 2021, to his detriment, as the alleged harm had already occurred on September 3, 2021. As such, the complaint demonstrates that the harm to Plaintiff did not result from this alleged omission (*See, i.e., Greentech Research LLC v Wissman*, 104 AD3d 540, 540 [1st Dept 2013] ["The court properly dismissed the fraud claim for failure to plead fraud with the particularity required by CPLR 3016(b) and for failure to plead loss causation. As the motion court noted, and as plaintiffs fail to refute on appeal, their losses were directly caused by the negative press reports about defendants, not by Hunt's and HFV's alleged misrepresentations and omissions."]).[2]

Accordingly, Defendant's motion to dismiss the cause of action for fraud is granted as against it.

In light of the foregoing, Defendant has also demonstrated its entitlement to dismissal of the cause of action for conspiracy to commit fraud, as Plaintiff has not alleged a cause of action for fraud (*Cohen Brothers Realty Corp. v Mapes*, 181 AD3d 401, 404 [1st Dept 2020] ["To establish a claim of civil conspiracy, the plaintiff must demonstrate the primary tort, plus the following four elements: an agreement between two or more parties; an overt act in furtherance of the agreement; the parties' intentional participation in the furtherance of a plan or purpose; and resulting damage or injury"]; *Truong v AT&T*, 243 AD2d 278, 278 [1st Dept 1997] ["Since the underlying fraud claim is not viable, and there is no substantive tort of conspiracy, the cause of action for conspiracy to commit fraud is deficient"]).

[2] The affidavit of Plaintiff, submitted in opposition to Defendant's motion, has not been considered, as it is not notarized, and is thus in inadmissible form. In any case, the affidavit does not allege any other misrepresentations or omissions of fact.

Moreover, Defendant has further demonstrated that the conclusory allegations of conspiracy based on other defendants' alleged misrepresentations are not sufficient to allege a cause of action for conspiracy as against it. (*See Kovkov v Law Firm of Dayrel Sewell, PLLC*, 182 AD3d 418, 419 [1st Dept 2020] ["Bare, conclusory allegations of conspiracy are insufficient"]; *Schwartz v Society of N.Y. Hosp.*, 199 AD2d 129, 130 [1st Dept 1993] ["Although tort liability may be imposed based on allegations of conspiracy which 'connect nonactors, who might otherwise escape liability, with the [tortious] acts of their coconspirators', more than a conclusory allegation of conspiracy or common purpose is required to state a cause of action against such nonactor"]).

Accordingly, Defendant's motion to dismiss the cause of action for conspiracy to commit fraud is granted as against it.

Leave to Replead/Amend Complaint:

Plaintiff's request for leave to replead and/or amend its complaint, should the Court find it to be deficient in alleging a cause of action for fraud or conspiracy to commit fraud is denied.

"[T]he standard to be applied on a motion for leave to replead pursuant to CPLR 3211(e) is consistent with the standard governing motions for leave to amend pursuant to CPLR 3025" (*Guzman v Kordonsky*, 177 AD3d 708, 710 [2d Dept 2019]; *Janssen v Incorporated Village of Rockville Centre*, 59 AD3d 15, 27 [2d Dept 2008]).

CPLR § 3025(b) provides that:

> A party may amend his or her pleading, or supplement it by setting forth additional or subsequent transactions or occurrences, at any time by leave of court or by stipulation of all parties. Leave shall be freely given upon such terms as may be just including the granting of costs and continuances. Any motion to amend or supplement pleadings shall be accompanied by the proposed amended or supplemental pleading clearly showing the changes or additions to be made to the pleading.

Applications to amend pleadings are within the sound discretion of the court. Courts are given considerable latitude in exercising their discretion, and absent abuse of discretion as a matter of law, such determination will not be disturbed on appeal (*Kimso Apartments, LLC v Gandhi*, 24 NY3d 403, 411 [2014]).

Leave to amend should be granted in the absence of evidence of substantial prejudice or surprise or that the proposed amendments are palpably insufficient or patently devoid of merit (*JP Morgan Chase Bank, N.A. v Low Cost Bearings N.Y. Inc.*, 107 AD3d 643, 644 [1st Dept 2013]). The party seeking the amendment has the burden of showing that the proposed amendment is not palpably insufficient or patently devoid of merit (*MBIA Ins. Corp. v Greystone & Co., Inc.*, 74 AD3d 499 [1st Dept 2010]).

"Mere lateness is not a barrier to the amendment. It must be lateness coupled with significant prejudice to the other side" (*Edenwald Contracting Co. Inc. v City of New York*, 60 NY2d 957, 959 [1983]). Absent prejudice, courts are free to permit amendment, even after trial. "Prejudice is more than the mere exposure of the [party] to greater liability. Rather, there must be some indication that the [party] has been hindered in the preparation of [the party's] case or has been prevented from taking some measure in support of [its] position. The burden of establishing prejudice is on the party opposing the amendment" (*Kimso* at 411 [internal quotations omitted]).

Here, Plaintiff's request for leave to replead and/or amend its complaint is denied. Plaintiff did not submit a proposed complaint or otherwise demonstrate that the proposed amendments would not be palpably insufficient or patently devoid of merit (*See Cracolici v Barkagan*, 127 AD3d 414, 415 [1st Dept 2015] ["The court providently exercised its discretion in denying plaintiff leave to amend the complaint absent any indication as to the nature of, evidentiary basis for, or viability of, the proposed amendment, a copy of which was not annexed to the cross motion"]; *see also Greentech Research LLC* at 541 ["The court providently exercised its discretion in denying plaintiffs' request for leave to replead, given the absence of an affidavit of merits and evidentiary proof to support their request"]). In fact, Plaintiff did not even set forth what amendments it seeks to make.

Accordingly, Plaintiff's request for leave to replead and/or amend its complaint is denied.

(The First) Fourth Cause of Action (Unjust Enrichment):

Defendant argues that Plaintiff has not alleged a cause of action for unjust enrichment as against it, because the allegations are conclusory. Defendant argues that the complaint does not allege how Defendant was enriched by any of the alleged actions of the parties. Defendant argues that there is no allegation in the complaint that Defendant participated in removing Plaintiff from the business.

In opposition, Plaintiff argues that the complaint alleges that the defendants ejected him from a lucrative business investment and implanted a newly created company to his detriment. Plaintiff argues that Defendant entered into a new lease with the new entity and is collecting rent and is thus gaining a benefit which it obtained as a result of the harm to Plaintiff. Plaintiff also argues that Defendant has withheld the security deposit from Plaintiff.

In reply, Defendant argues that the Lease was between Defendant and Kids Space. Defendant argues that Plaintiff was not party to that Lease, other than as guarantor. Defendant argues that if Defendant received any benefit from the cancellation of the Lease, it would have been to the detriment of Kids Space, not Plaintiff.

"The theory of unjust enrichment is rooted in the equitable principle that a person shall not be allowed to enrich himself unjustly at the expense of another" (*Mannino v Wells Fargo Home Mortg., Inc.*, 155 AD3d 860, 862 [2d Dept 2017] [internal quotation marks omitted]). "The essential inquiry in any action for unjust enrichment … is whether it is against equity and good conscience to permit the defendant to retain what is sought to be recovered" (*Mandarin Trading Ltd. v Wildenstein,* 16 NY3d 173, 182 [2011]).

To plead a cause of action for unjust enrichment, "a plaintiff must allege that (1) the other party was enriched, (2) at that party's expense, and (3) that it is against equity and good conscience to permit the other party to retain what is sought to be recovered" (*Mannino* at 862; *Mandarin* at 182; *McMurray v Hye Won Jun,* 168 AD3d 435, *1 [1st Dept 2019]). Moreover, "[a]lthough privity is not required for an unjust enrichment claim, a claim will not be supported if the connection between the parties is too attenuated" (*Mandarin Trading Ltd.* at 182; *Georgia Malone & Co., Inc. v Ralph Rieder,* 86 AD3d 406, 408 [1st Dept 2011] ["although privity is not required for an unjust enrichment claim, a claim will not be supported unless there is a connection or relationship between the parties that could have caused reliance or inducement on the plaintiff's part"]).

Here, Defendant has not demonstrated entitlement to dismissal of the cause of action for unjust enrichment. The complaint alleges that Defendants have been unjustly enriched by obtaining benefits which were due to Plaintiff had he not been improperly removed from the business (Compl. ¶ 50, 85). Although Defendant argues that the complaint does not allege that Defendant participated in removing Plaintiff from the business, the complaint alleges otherwise (Compl. ¶ 44-46). Additionally, Plaintiff argues in opposition that Defendant was enriched by

cancelling the Lease and entering into a new lease with another entity, from whom it is collecting rent. This is supported by the allegations in the complaint (Compl. ¶ 43-44, 83). Defendant's argument that this alleged enrichment was not at Plaintiff's expense, but at Kids Space's expense, is without merit. Plaintiff alleges that he is a 50% shareholder of Kids Space, and that he has been damaged as he would have earned the profits that Kids Space would have earned had the lease not been terminated (Compl. ¶ 16, 44-46, 50).

Accordingly, Defendant's motion to dismiss the cause of action for unjust enrichment is denied.

Tenth Cause of Action (Attorneys' Fees):

Plaintiff has withdrawn this cause of action, as it applies to Defendant, in its opposition papers. Accordingly, this cause of action is marked withdrawn as against Defendant.

Eleventh Cause of Action (Punitive Damages):

Defendant has demonstrated that the cause of action for punitive damages should be dismissed, as it is well-settled that there is no separate cause of action for punitive damages (*Rocanova v Equitable Life Assur. Socy. of U.S.*, 83 NY2d 603, 616 [1994] ["A demand or request for punitive damages is parasitic and possesses no viability absent its attachment to a substantive cause of action such as fraud"]; *Jean v Chinitz*, 163 AD3d 497, 498 [1st Dept 2018] ["A separate cause of action for punitive damages is not legally cognizable"]; *La Porta v Alacra, Inc.*, 142 AD3d 851, 853 [1st Dept 2016]). The Court notes that Plaintiff sufficiently seeks an award of punitive damages in the wherefore clause of the complaint (*La Porta v Alacra, Inc.*, 142 AD3d 851, 853 [1st Dept 2016] ["While plaintiff is entitled to include in her prayer for relief a request that she be awarded punitive damages in the event she proves the requisite degree of culpability on her causes of action for violation of the City HRL, a claim for punitive damages may not be maintained as a separate cause of action"]).

Accordingly, Defendant's motion to dismiss the eleventh cause of action is granted.

It is hereby

ORDERED that the Clerk dismiss the first and tenth causes of action as against Defendant 138 S&H Realty Corporation only; and it is further

ORDERED that the Clerk dismiss the eleventh cause of action in its entirety; and it is further

ORDERED that this matter is scheduled for a **Preliminary Conference** on **December 12, 2022, at 2:00 p.m.**; and it is further

ORDERED that the Defendant serve a copy of this Decision and Order upon Plaintiff, with Notice of Entry, within thirty (30) days of the date hereof.

This constitutes the Decision and Order of this Court.

Dated: 10/28/22

Hon. **FIDEL E. GOMEZ, A.J.S.C.**