SUPREME COURT OF THE STATE OF NEW YORK

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MICHAEL EDWARDS and OLD POST COMPANY, INC.,

Plaintiffs,

- v -

ARROWGRASS CAPITAL PARTNERS LLP, ARROWGRASS CAPITAL PARTNERS (US) LP, ARROWGRASS CAPITAL SERVICES (US) INC., ARROWGRASS CAPITAL SERVICES UK LTD., and ARROWGRASS INVESTMENT MANAGEMENT LTD.,

Defendants.

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INDEX NO. 654375/2019

MOTION DATE _____

MOTION SEQ. NO. 005

DECISION + ORDER ON MOTION

HON. ANDREA MASLEY:

The following e-filed documents, listed by NYSCEF document number (Motion 005) 104, 105, 106, 107, 108, 109, 110, 111, 112, 113, 114, 115, 116, 117, 118, 119, 120, 121, 122, 123, 124, 125, 126, 127, 128, 129, 130, 131, 132, 133, 134, 135, 136, 137, 138, 139, 140, 141, 142, 143, 144, 145, 146, 147, 148, 149, 150, 151, 152, 153, 154, 155, 156, 157, 158, 159, 165, 166, 167, 168, 169, 170, 171, 172, 173, 174, 175, 176, 177, 178, 179, 180, 181, 182, 183, 184, 185, 186, 187, 188, 189, 190, 191, 192, 193, 194, 195, 196, 197, 198, 199, 200, 201, 202, 203, 204, 205, 206, 207, 208, 209, 210, 211, 212, 213, 214, 215, 228, 230

were read[1] on this motion to/for JUDGMENT - SUMMARY.

Upon the foregoing documents, it is

In motion sequence number 005, defendants Arrowgrass Capital Partners LLP, Arrowgrass Capital Partners (US) LP, Arrowgrass Capital Services (US) Inc., Arrowgrass Capital Services UK Ltd., and Arrowgrass Investment Management Ltd. (collectively, Arrowgrass) move, pursuant to CPLR 3212, for summary judgment dismissing the amended complaint in its entirety.

[1] The court reviewed, and where appropriate considered, additional documents mentioned in the parties' papers but omitted in this autogenerated caption for both motions.

Background

"Arrowgrass is a London-headquartered investment manager." (NYSCEF 158, Defendants' Statement of Material Facts[2] ¶ 1.) In 2010, Arrowgrass hired plaintiff Michael Edwards to run its Event Driven strategy and subsequently appointed Edwards as the head of Arrowgrass's US operations. (*Id.* ¶¶ 2-3.) On March 29, 2018, Edwards tendered his resignation to Arrowgrass' executive committee. (NYSCEF 169[3], Edwards aff ¶ 2; NYSCEF 173, Resignation Email.)

On May 31, 2018, the parties[4] entered into three agreements - the Membership Purchase Agreement, the Separation Agreement, and the Consultancy Agreement (collectively, Exit Agreements) – which set forth the terms of Edwards's departure from Arrowgrass. (NYSCEF 158, Arrowgrass Statement of Material Facts ¶ 16.) The parties amended the Exit Agreements on December 18, 2018. (*Id.* ¶ 17.)

The Consultancy Agreement designated Edwards as the "Consultant Personnel," and under the terms of the Agreement, he was to solicit bids for Arrowgrass's stake in X Corp.; if a bid was successful, Edwards would receive a success fee. (*Id.* ¶¶ 24, 28.) Arrowgrass purchased its stake in X Corp. for $30 million and the value of the stake increased in value. (*Id.* ¶¶ 21-22.) Because of its ownership position in X Corp.,

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[2] Unless indicated otherwise, the background here is taken from Arrowgrass's Statement of Material Facts are undisputed by plaintiffs in their response. (*See* NYSCEF 184, Response to Statement of Material Facts.)

[3] This affidavit is filed twice at NYSCEF 169 and NYSCEF 172. This decision will cite to NYSCEF 169.

[4] Arrowgrass executed the Consultancy Agreement on behalf of plaintiff Old Post Company, Inc. (Old Post), a company formed by Edwards to provide consulting services. (NYSCEF 110, Amended and Restated Consultancy Agreement at ARROWGRASS 052082; NYSCEF 169, Edwards aff ¶ 7.)

Arrowgrass designated Edwards sa its representative to sit on X Corp.'s Board of Directors. (*Id.* ¶¶ 31-32.)

Section 5 of the Consultancy Agreement details the obligations of the parties. Specifically, Section 5.2(a) provides that

> "[t]he Consultant Personnel shall at all times during the period of this Agreement use its best efforts to:
>
> (a) faithfully and diligently perform the Services and exercise such powers consistent with them which are from time to time necessary or desirable in connection with the provision of the Services, all subject to the terms of Schedule I." (NYSCEF 110, Consultancy Agreement at 8-9[5].)

Section 5.11 provides that

> "[t]he Company shall work with the Consultant Personnel in good faith and use commercially reasonable efforts and without unreasonable delay to negotiate and execute a Definitive Sale Agreement, provided that nothing in this Agreement or the Exit Documents shall require the Company or the AG YMJ Holder to execute a Definitive Sale Agreement and any decision to do so shall be made solely by the Company acting in its good faith but in its sole and absolute discretion." (*Id.* at 10 [emphasis in original].)

On March 13, 2019, Edwards gave a presentation to Arrowgrass detailing his efforts to sell its X Corp. stake and identifying four potential bidders, including a Delaware company called MNA Capital LLC (MNA). (NYSCEF 158, Defendants' Statement of Material Facts ¶¶ 35-36, 38; NYSCEF 117, March 13 Presentation.) The March 13 Presentation identified MNA as a "family office (FO)"[6] and did not indicate Edwards's interest in MNA. (NYSCEF158, Defendants' Statement of Material Facts ¶

[5] NYSCEF pagination.

[6] Edwards claims that MNA is a special purpose vehicle (SPV) and he only designated MNA as a 'family office' in the Presentations because the MNA investors "best fit within this 'FO' category because as a group they did not fit neatly within any of the other categories in the template." (NYSCEF 169, Edwards aff ¶ 11.)

43; NYSCEF 117, March 13 Presentation at 14.) On March 29, 2019, "Arrowgrass engaged outside counsel to prepare a purchase and sale agreement" based on Edwards's representation that there would be a bid shortly; six drafts of the agreement were prepared in anticipation of a sale. (NYSCEF 156, Carron aff ¶ 27.)

By letter dated March 31, 2019, Arrowgrass informed Edwards that Arrowgrass was providing Edwards with 30-days' notice of Early Termination of the Consultancy Agreement, setting his "Exit Date" for April 30, 2019, in accordance with the 30-day notice requirement set forth in section 4.1 of the Consultancy Agreement. (NYSCEF 174, Notice of Early Termination at 3.)[7]

On April 12, 2019, Edwards sent Arrowgrass an unsigned "non-binding Term Sheet" from MNA, proposing to acquire Arrowgrass's stake in X Corp. for $73 million (Indication). (NYSCEF 158, Arrowgrass's Statement of Material Facts ¶¶ 38-39; *see also* NYSCEF 119, MNA Indication.) The Indication was set to expire on April 19, 2019. (*Id.* ¶ 40; NYSCEF 119, MNA Indication at ARROWGRASS 059554.) On April 16, 2019, Edwards shared "an updated presentation of the draft of the overall sales process." (NYSCEF 118, Updated Presentation.)

On April 30, 2019, Arrowgrass's Head of Research, Georges Memmi, and equity analyst, Tim Daniels, spoke to X Corp.'s CFO who informed them that X Corp. valued itself at $1.25 billion, contradicting Edwards's valuation, and that X Corp. had received "strong indications of interest" from external investors willing to "invest new capital at the $1.25 billion equity valuation." (NYSCEF 156, Carron aff ¶¶ 28-29.) X Corp.'s CFO

[7] The Notice of Early Termination Letter was attached to an email dated April 1, 2019. (NYSCEF 174, Notice of Early Termination at 2.)

also informed Arrowgrass that the $1.25 billion valuation was communicated to and approved by X Corp.'s Board of Directors. (*Id.* ¶ 30.) Arrowgrass asserts that Edwards, as a member of X Corp.'s Board had to be aware of this valuation, yet never communicated it to Arrowgrass. (*Id.*)

On May 6, 2019, Memmi and Daniels conducted further due diligence and spoke to an "existing unaffiliated investor in X Corp." who confirmed that the equity value of X Corp. was $1.25 billion which would result in a value of $108 million for Arrowgrass's stake in X Corp. (*Id.* ¶ 33.) On May 8, 2019, Memmi, Daniels, and Arrowgrass CIO, Nick Niell, met with X Corp.'s CEO, where he "reiterated that X Corp.'s was seeking to raise $350 million on an equity valuation of $1.25 billion" and "noted that X Corp. had already received initial commitments from existing shareholders to fund a significant portion the capital raise." (*Id.* ¶ 31.) According to Arrowgrass, X Corp.'s CEO also expressed concern that a quick sale of Arrowgrass's stake in X Corp. at a discount, prior to X Corp.'s capital raise, could disrupt the capital raise and the value of the Arrowgrass stock. (*Id.* ¶ 32.)

Arrowgrass claims that it requested Edwards provide contact information for MNA so that it could communicate with MNA directly but received no response. (*Id.* ¶ 34.) By mid-May 2019, Arrowgrass determined that it would not be "commercially reasonable" to pursue MNA since

> "Edwards had misrepresented X Corp.'s prospects and overall valuation before submitting the Indication; Edwards had not represented the state of the X Corp. capital raise accurately; the market price for the Arrowgrass Stake appeared to be $108 million and not $73 million as set out in the Indication; the Indication had in any case expired by its own terms within seven days and was of no force and effect; MNA had not made any effort to extend the Indication; MNA had not represented any fiscal capacity to actually close a purchase even at $73 million and was now

> missing in action; Edwards had not presented Arrowgrass with any other bid; and Edwards had failed or refused to provide contact information for MNA or any other possible bidder frustrating any ability of Arrowgrass to pursue the bid." (*Id.* ¶¶ 35-36.)

During the discovery process for this action, Arrowgrass contends that it discovered for the first time that "Edwards formed MNA, . . . held a 60% stake in the entity, . . . entered into an operating agreement, . . . had authorization to sign documents on behalf of MNA . . . and had funded initial working capital for MNA in the amount of $ 21,000." (*Id.* ¶ 38 [citations omitted].)

On August 1, 2019, plaintiffs filed this action for breach of contract, breach of implied covenant of good faith and fair dealing, and fraud. (NYSCEF 1, Complaint.) On December 19, 2019, the court dismissed the breach of implied covenant of good faith and fair dealing and fraud claims. (NYSCEF 17, Decision and Order [mot. seq. no. 001].) Plaintiffs thereafter amended the complaint to add an additional ground for their breach of contract claim, now alleging that Arrowgrass breached the Consultancy Agreement (1) "by failing to work with Old Post in good faith, failing to use commercially reasonable efforts without undue delay and failing to use good faith in selling its stake in X Corp." and (2) by terminating that Agreement without one of the grounds for termination enumerated in Section 11 of the Agreement (newly added ground). (NYSCEF 48, First Amended Complaint [FAC] ¶ 51.)

Discussion

Legal Standard

Summary judgment is a drastic remedy that will be granted only if the movant demonstrates that no genuine triable issue of fact exists. (*See Zuckerman*

v City of New York, 49 NY2d 557, 562 [1980].) "[T]he proponent of a summary judgment motion must make a prima facie showing of entitlement to judgment as a matter of law, tendering sufficient evidence to demonstrate the absence of any material issues of fact." (*Alvarez v Prospect Hosp.*, 68 NY2d 320, 324 [1986] [citation omitted].) Where this showing is made, the burden shifts to the party opposing the motion to produce sufficient evidentiary proof to establish the existence of a material issue of fact which requires a trial of the action. (*Id.*) In deciding a summary judgment motion, the "evidence must be analyzed in the light most favorable to the party opposing the motion." (*Martin v Briggs*, 235 AD2d 192, 196 [1st Dept 1997] [citation omitted].) The motion should be denied if there is any doubt about the existence of a material issue of fact. (*Vega v Restani Constr. Corp.*, 18 NY3d 499, 503 [2012].) However, bare allegations or conclusory assertions are insufficient to create genuine issues of fact to defeat the motion. (*Zuckerman v City of New York*, 49 NY2d at 562.) "A motion for summary judgment should not be granted where the facts are in dispute, where conflicting inferences may be drawn from the evidence, or where there are issues of credibility." (*Ruiz v Griffin*, 71 AD3d 1112, 1115 [2d Dept 2010] [internal quotation marks and citations omitted].)

Breach of Contract

Plaintiffs allege that Arrowgrass is in breach of the provisions of the Consultancy Agreement for (i) failure "to work with Old Post in good faith, failing to use commercially reasonable efforts without undue delay and failing to use good faith in selling its stake in X Corp.;" and (ii) terminating the Consultancy Agreement in violation of Section 11. (NYSCEF 51, FAC ¶ 51.) Arrowgrass asserts that the breach of contract claim must be

dismissed because plaintiffs were in material breach of the Consultancy Agreement, while Arrowgrass performed its obligations under the Agreement.

"[A] material breach by one party generally excuses performance by the other." (*Muniak v KH 48 LLC*, ___AD3d___, 2024 NY Slip Op 01516, *1 [1st Dept 2024] [citation omitted].) Whether a breach excuses the other party's "performance depends on whether the breach was material." (*Zyskind v FaceCake Mktg. Tech., Inc.*, 110 AD3d 444, 446 [1st Dept 2013] [citation omitted].) "When a party materially breaches a contract, the nonbreaching party must choose between two remedies: it can elect to terminate the contract or continue it." (*Awards.com v Kinko's, Inc.*, 42 AD3d 178, 188 [1st Dept 2007] [citations omitted].)

Policy Violations

Arrowgrass claims that Edwards violated its compliance policies and failed to perform his duties diligently and faithfully under the Consultancy Agreement. Arrowgrass asserts that these violations resulted in material breaches of Section 5.2 and 5.8[8] of the Consultancy Agreement and these material breaches excuse Arrowgrass, as the nonbreaching party, from performing its contractual obligations. Arrowgrass contends that Edwards violated Arrowgrass's Conflicts of Interest Policy by failing to disclose his membership interest in MNA, one of the potential bidders for

[8] Section 5.8 provides that "the Consultant Personnel shall at all times observe and comply with the rules and requirements of the Company's compliance policies and procedures as available on the Company's intranet site to which the Consultant Company has access, including but not limited to Company's Compliance Manual and Code of Ethics, in force from time to time, together with any applicable written notices issued by the Company, and shall sign such forms and undertakings in relation to such matters as the Company or any Group Company may from time to time require." (NYSCEF 110, Consultancy Agreement at 9.)

Arrowgrass's stake in X Corp and failed to disclose X Corp.'s own valuation of $1.25 billion in violation of Arrowgrass's Code of Ethics.

Plaintiffs dispute that Edwards was bound by Arrowgrass's Code of Ethics and Conflicts of Interest Policy, asserting that he was no longer an Arrowgrass employee. However, this argument is without merit. Although Edwards was no longer an employee,[9] section 5.8 of the Consultancy Agreement required that he comply with Arrowgrass's "compliance policies and procedures as available on the Company's intranet site to which the Consultant Company has access, including but not limited to Company's Compliance Manual and Code of Ethics." (NYSCEF 110, Consultancy Agreement at 9.)

Nevertheless, there are issues of fact as to whether Edwards violated these policies. Arrowgrass claims that Edwards violated the Conflicts of Interest Policy by formulating and submitting a low-ball bid and misrepresenting X Corp.'s financials without disclosing his interest for his own personal financial gain at Arrowgrass's expense. To support these claims, Brett Carron, Arrowgrass's General Counsel and Co-Chief Operating Officer, attests that Edwards did not disclose his interest in MNA, including in the March 13 and April 16 Presentations. (NYSCEF 156, Carron aff ¶¶ 1, 39.) Arrowgrass also submits an April 12, 2019 email sent from Edwards's MNA email address to his Old Post email (NYSCEF 120, me@mnacap.com Email), which Edwards then forwarded from his Old Post email to his Arrowgrass email (NYSCEF 121,

[9] Section 3.1 of the Consultancy Agreement provides that "[t]he Consultant Personnel are employed or engaged directly by the Consultant Company and nothing in this Agreement shall render the Consultant Personnel employees or workers or a partner either of the Company or of any Group Company." (NYSCEF 110, Consultancy Agreement at 8.)

me@oldpostco.com Email), before ultimately forwarding this email to Arrowgrass (NYSCEF 119, Indication Email), as evidence that Edwards was actively concealing his interest in MNA.

Edwards admits that he did not disclose his membership interest in MNA to Arrowgrass, because he did not consider membership to be an ownership interest as MNA was a SPV, but states that he did disclose that he was involved with MNA to Arrowgrass on many occasions. (NYSCEF 176, tr at 82:20-84:13, 151:4-15, 177:5-19 [Edwards Deposition]; NYSCEF 169, Edwards aff ¶ 11.) Edwards avers that he informed Arrowgrass that, if MNA's bid was successful, he would most likely continue to serve on the X Corp.'s Board. (NYSCEF 176, tr at 83:9-17; NYSCEF 169, Edwards aff ¶ 11.)

The parties' conflicting testimony presents an issue of fact. It cannot be determined on this record whether Edwards disclosed his involvement in MNA, and the extent of this involvement, to Arrowgrass. Further, the emails submitted by Arrowgrass do not conclusively evidence that Edwards actively hid his involvement with MNA.

An issue of fact also exists as to whether Edwards disclosed X Corp.'s self-evaluation of $1.25 billion. Although Carron and Memmi aver that Edwards never informed them that X Corp.'s self-valuation was $1.25 billion (NYSCEF 156, Carron aff ¶ 30; NYSCEF 157, Memmi aff ¶¶ 5, 8), Edwards counters that he did and included such in his March 13 Presentation under the heading "B Round Dynamics." (NYSCEF 169, Edwards aff ¶ 19; NYSCEF 117, March 13 Presentation at 15.) Again, the parties' conflicting testimony presents an issue of fact that cannot be resolved on a summary judgment motion.

Arrowgrass argues that Edwards's affidavit contradicts his deposition testimony, and therefore, does not raise a disputed issue of fact. However, the court finds no such contradiction. Further, Arrowgrass's expert report does not and cannot resolve these issues of fact. (*See* NYSCEF 125, Mumford Report.)

Fiduciary Duty

Arrowgrass also claims that Edwards's nondisclosure of X Corp.'s own valuation and his interest in MNA violated the Advisors Act as it was a breach of his fiduciary duties of loyalty as an investment advisor. Arrowgrass asserts that this belies any claim that Edwards was a faithful servant and further underscores his material breaches under sections 5.2 and 5.8 of the Consultancy Agreement. The court notes there is no counterclaim for violation of the Advisors Act. However, one of Arrowgrass's affirmative defenses is that "Plaintiffs' alleged damages are the result of Plaintiffs' own breach of fiduciary duty." (NYSCEF 109, Answer to Amended Complaint ¶ 12 [affirmative defenses].) Nevertheless, as discussed above, issues of fact exist that prevent the court from being able to determine whether Edwards breached any fiduciary duty he owed.

Arrowgrass's Obligations Under the Consultancy Agreement

Pursuant to the Consultancy Agreement, Arrowgrass agreed "to work with the Consultant Personnel in good faith and use commercially reasonable efforts and without unreasonable delay to negotiate and execute a Definitive Sale Agreement." (NYSCEF 110, Consultancy Agreement at 10 [section 5.11].) However, the Agreement does not require Arrowgrass "to execute a Definitive Sale Agreement and any decision to do so

shall be made solely by the Company acting in its good faith but in its sole and absolute discretion." (*Id.*)

Arrowgrass contends that it performed its obligations under the Consultancy Agreement as it conducted a full array of due diligence and only choose to not pursue MNA when it learned MNA's offer undervalued X Corp. and MNA did not have the funds to enter into a Definitive Sales Agreement. Arrowgrass also contends that Edwards forwarded the Indication knowing that MNA lacked the funds to purchase Arrowgrass's stake, and thus, failed to satisfy a condition precedent to the Consultancy Agreement, relieving Arrowgrass of any obligation to perform under the Agreement.

Whether Arrowgrass worked with Edwards in good faith and used commercially reasonable efforts or whether Edwards failed to satisfy a condition precedent under the Agreement cannot be determined on this motion as the parties are in dispute about several issues of material fact. The circumstances leading up to the expiry of the Indication are entirely in dispute. Among other facts, the parties are in dispute over whether Edwards informed Arrowgrass of potential bids from multiple investors, whether Arrowgrass informed Edwards it was not willing to sell its stake in X Corp. and tried to amend the Consultancy Agreement, whether Arrowgrass did not pursue MNA due to its purported lack of financial capacity, whether MNA's Indication undervalued X Corp., and whether Arrowgrass choose not to pursue a stake sale to MNA due to the possibility of the stake sale disrupting X Corp.'s proposed capital raise.

Further, it bears mentioning that certain facts set forth in Memmi's affidavit are inadmissible hearsay because they are statements made by X Corp.'s CEO and CFO to

Memmi out of court and offered for their truth.[10] These facts admittedly have a bearing on Arrowgrass's decision to not pursue MNA as it claims that it learned for the first time (a fact disputed by plaintiffs) that MNA's valuation of X Corp. was significantly lower than X Corp.'s own valuation and X Corp.'s CEO advised Arrowgrass to not sell its stake in X Corp. prior to the proposed capital raise. The court cannot grant summary judgment based on hearsay. (*Arnold Herstand & Co. v Gallery: Gertrude Stein, Inc.*, 211 AD2d 77, 83 [1st Dept 1995].)

Terminating Consultancy Agreement – Section 11

In their opposition, plaintiffs argue that Arrowgrass did not address their newly added ground of a separate and independent breach of the Consultancy Agreement for violating section 11. In response, Arrowgrass asserts that it terminated the Consultancy Agreement pursuant to section 4, and not section 11, as plaintiffs now claim.

Section 11 of the Consultancy Agreement provides the circumstances which would allow Arrowgrass or Old Post to terminate the agreement. Specifically, section 11.1 states,

> "[e]ither the Company or the Consultant Company may terminate this Agreement immediately by notice in writing to the other if the other:
>
> (a) commits any material breach of this Agreement, unless if in the opinion of Company any such breach is capable of cure and such breach is cured within 7 days of notice of such breach; or
>
> (b) is unable to pay its debts or enters into compulsory or voluntary liquidation or bankruptcy or has a receiver, manager, administrator or trustee in bankruptcy appointed or enters into any composition with creditors; or
>
> (c) ceases for any reason to carry on business." (NYSCEF 110, Consultancy Agreement at 13.)

[10] Arrowgrass does not address this in its reply.

Section 11.2 provides that

> "[t]he Company may terminate this Agreement immediately by notice in writing to the Consultant Company if the Consultant Personnel:
>
> (a) are unable to provide the Services by reason of ill-health or otherwise for a period of 14 days; or
>
> (b) become a patient for the purposes of any statute relating to mental health; or
>
> (c) commit any serious and persistent breach or non-observance of any of the provisions of this Agreement which (if capable of remedy) has not been remedied within seven days of receipt of notice thereof by the Consultant Company; or
>
> (d) refuse or neglect to comply with any reasonable and lawful instructions of the Company; or
>
> (e) are in the reasonable opinion of the Company negligent and incompetent in the performance of the Services or cause loss or damage to the Company, any Group Company or any client or investor of the Company or any Group Company by their negligent act or omission; or
>
> (f) is convicted of any criminal offense (other than an offence under any road traffic legislation in the state of New York or elsewhere for which a fine or noncustodial penalty is imposed); or
>
> (g) is guilty of any fraudulent or dishonest acts in any manner which in the opinion of the Company brings or is likely to bring the Consultant Company or the Company or any Group Company into disrepute or is materially adverse to the interests of the Company or any Group Company or has impaired or is likely to impair the Consultant Company's ability to provide the Services." (*Id*. at 13-14.)

Section 4.1 of the Agreement provides that "[t]he Appointment shall commence on the Commencement Date and shall continue to the Termination Date, unless extended in writing by both the Company Representative and Consultant Company or early terminated prior to such date pursuant to section 11 of this Agreement." (*Id.* at 8.)

Section 4 details the duration of the Agreement with the Commencement Date defined as "1 January 2019 or such other date as agreed in writing between the parties" and Termination Date defined as "the date on which the sale under the Definitive Sale Agreement is consummated, provided that in the event of Early Termination the Termination Date is the date that Early Termination takes effect." (*Id*. at 3, 6 [section 1.1].) Early Termination is defined as "the date specified in writing on 30 calendar days' notice to be given no earlier than (a) from or after 1 Jan 2019 if by Michael Edwards and (b) from or after 31 March 2019 if by Arrowgrass." (*Id*. at 5 [section 1.1].) Thus, the Consultancy Agreement could be terminated in two ways – a termination prior to the Termination Date pursuant to one of the grounds enumerated in section 11 or by the durational limit pursuant to section 4.1 and respective defined terms.

The Termination Notice, dated March 31, 2019, states "[t]his notice confirms that, pursuant to clause 4.1 of the Consulting Agreement, we hereby give you 30 days' notice of Early Termination of the Consulting Agreement and that accordingly your Exit Date, for the purposes of the Consulting Agreement and the Separation Agreement, shall be 30 April 2019." (NYSCEF 115, Termination Notice at 3.) Pursuant to section 4.1, Arrowgrass could terminate the Consultancy Agreement by 30 days' notice from or after March 31, 2019, i.e., Early Termination as defined in section 1.1, which it did. Arrowgrass did not need to have a section 11 ground to terminate the Agreement because it was within the parameters of the Early Termination provision. Thus, plaintiffs added claim for breach of section 11 is dismissed.

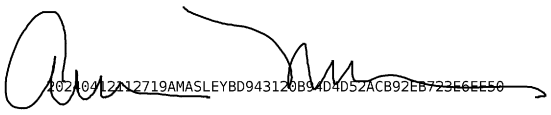
All remaining arguments have been considered and do not alter the court's determination.

Accordingly, it is

ORDERED that the defendants' motion for summary judgment, is granted in part, and plaintiffs' claim for breach of the Consultancy Agreement in violation of section 11 is dismissed; and it is further

ORDERED motions *in limine* shall be filed within 60 days of the date of this decision and order or otherwise waived; and it is further

ORDERED that the court will schedule a pre-trial conference after decision on motions in limine or if there are not such motions parties are to appear for a remote trial date selection conference on June 3, 2024 at 4 pm. The parties shall read the Part 48 trial procedures and submit a list of witnesses 24 hours before the conference.



4/12/2024
DATE

ANDREA MASLEY, J.S.C.

CHECK ONE:		CASE DISPOSED			X	NON-FINAL DISPOSITION	
		GRANTED		DENIED	X	GRANTED IN PART	OTHER
APPLICATION:		SETTLE ORDER				SUBMIT ORDER	
CHECK IF APPROPRIATE:		INCLUDES TRANSFER/REASSIGN				FIDUCIARY APPOINTMENT	REFERENCE