Enterprise v Shvo
2026 NY Slip Op 31129(U)
March 21, 2026
Supreme Court, New York County
Docket Number: Index No. 653221/2024
Judge: Andrea Masley

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK: COMMERCIAL DIVISION PART 48

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JENNIE ENTERPRISE, DANGENE ENTERPRISE, CORE GLOBAL HOLDINGS LLC, CORE GLOBAL VENTURES LLC, CORE 5TH AVENUE LLC, and CORE SF LLC,

Plaintiffs,

- v -

MICHAEL SHVO, SHVO CONCEPTS, LLC, SHVO HOLDINGS INC., SHVO CAPITAL LLC, SHVO DEVELOPMENT LLC, SHVO REALTY INVESTORS LLC, SHVO, INC., SHVO ENTERPRISES LLC, SHVO PROPERTY MANAGEMENT LLC, SHVO CARRY 711 LLC, SEREN MANAGING MEMBER 711 LLC, BH EJ CORE LLC,711 FIFTH AVE PRINCIPAL OWNER LLC, BHSD TPC PROPCO LLC, DEUTSCHE FINANCE AMERICA LLC, DEUTSCHE FINANCE GROUP, UNIVERSAL INVESTMENT GESELLSCHAFT MBH, UNIVERSAL INVESTMENT GROUP, and BAYERISCHE VERSORGUNGSKAMMER,

Defendants.

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INDEX NO. 653221/2024

MOTION DATE --

MOTION SEQ. NO. 001

DECISION + ORDER ON MOTION

HON. ANDREA MASLEY:

The following e-filed documents, listed by NYSCEF document number (Motion 001) 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 34, 35, 44, 45, 46, 47, 98, 99, 100, 102, 103, 116, 133, 154, 155, 156, 157, 158, 170, 171, 180

were read on this motion to/for DISMISS.

In motion sequence 001, defendants Michael Shvo, Shvo Concepts, LLC, Shvo Holdings, Inc., Shvo Capital LLC, Shvo Development LLC, Shvo Realty Investors LLC, Shvo, Inc., Shvo Enterprises LLC, Shvo Property Management LLC, Shvo Carry 711 LLC, Seren Managing Member 711 LLC, and BH EJ Core LLC (collectively, the Shvo Entities) move pursuant to CPLR 3211(a)(1), (5) and (7) to dismiss the amended complaint.[1] (*See* NYSCEF Doc. No. [NYSCEF] 3, Notice of Motion.)

[1] In the amended complaint plaintiffs allege eighteen causes of action for: (i) fraud; (ii) breach of contract, (iii) unjust enrichment; (iv) rescission; (v) undue influence; (vi)

Background

Plaintiffs Jennie Enterprise and Dangene Enterprise (collectively, the Enterprises) are entrepreneurs in the luxury hospitality industry. (NYSCEF 2, Amended Complaint [AC] ¶ 29.) The Enterprises own non-party CORE, a private members' club. (*Id.*)

Plaintiff CORE Global Holdings LLC holds the brand and intellectual property rights to CORE and is owned by the Enterprises. (*Id.* ¶ 30.)

Plaintiff CORE Global Ventures LLC is an affiliate of Core Global Holdings LLC and is owned by the Enterprises. (*Id.* ¶ 31.)

Plaintiff CORE 5th Avenue LLC is a wholly owned subsidiary of Core Global Holdings LLC. (*Id.* ¶ 32.) CORE 5th Avenue LLC is the tenant under the New York City lease (NYC Lease), with premises located at 711 Fifth Avenue, New York, NY. (*Id.*; NYSCEF 19, NYC Lease.)

Defendant 711 Fifth Ave Principal Owner LLC is the landlord of Core 5th Avenue LLC under the NYC Lease. (NYSCEF 2, AC ¶ 33.)

Defendant Michael Shvo is a real estate developer that controls and conducts his business through the Shvo Entities. (*Id.* ¶¶ 36-38.)

In the spring of 2020, Shvo approached plaintiffs promising to invest approximately $100 million to develop three new CORE: club locations in New York

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reformation of Lease Agreement; (vii) declaratory relief; (viii) accounting; (ix) breach of fiduciary duties; (x) prima facie tort; (xi) usury; (xii) misuse of legal process; (xiii) breach of the implied covenant of good faith and fair dealing; (xiv) negligent misrepresentation; (xv) negligence; (xvi) gross negligence; (xvii) breach of the Technical Services Agreement; and (xviii) violation of New York Civil Rights Law Section 51. (*See* NYSCEF 2, Amended Complaint [AC].)

City, San Francisco, and Milan, Italy. (*Id.* ¶¶ 39-40.) Plaintiffs, seeking a financial partner to expand their CORE: business, pursued a collaboration with Shvo. (*Id.* ¶ 42.)

Between January 2020 and January 2021, plaintiffs and defendants exchanged term sheets and letters of intent with regards to the proposed CORE: clubs. (*Id.* ¶¶ 43-44, 46-47; NYSCEF 7, 685 Fifth Term Sheet.)

On January 14, 2022, the parties executed a Membership Interest Option Agreement (Option Agreement), which in relevant part, provides that

> "In consideration of [BH EJ CORE LLC] . . . loaning to [CORE Global Holdings LLC] an amount up to $1,000,000 . . . [CORE Global Ventures LLC], [CORE Global Holdings LLC] and [the Enterprises] hereby grant to [BH EJ CORE LLC] an irrevocable option (the 'Option') to be exercised in [BH EJ CORE LLC's] sole discretion in accordance with the terms hereof, to purchase a membership interest equal to fifty percent (50%) of the membership interests of [CORE Global Holdings LLC], on a fully diluted basis (the 'Option Interest'). The Option shall have an exercise price of $1.00 (the 'Exercise Price')." (NYSCEF 10, Option Agreement § 1.1.)

Concurrently with the execution of the Option Agreement, the parties executed a promissory note that memorialized the $1,000,000 loan (Note). (NYSCEF 2, AC ¶ 49; NYSCEF 11, Promissory Note.) Plaintiffs allege that defendants executed the Option Agreement and Note "with the knowledge and expectation that the [p]laintiffs would be forced to draw down on such credit line to cover necessary expenditures and shortfalls" so that Shvo could ultimately "captur[e] a 50% stake in the [p]laitiffs' business." (NYSCEF 2, AC ¶¶ 50, 52.)

In the summer of 2022, the construction and development of the three CORE: clubs began to unravel. (*Id.* ¶ 55.) Shvo reneged on his commitment to fund the Milan club. (*Id.*) Similarly, Shvo failed to deliver the San Francisco club, despite publicly advertising the opening of the club in the summer of 2024. (*Id.* ¶¶ 56-57.) Though the

NYC club was ultimately delivered to plaintiffs, Shvo "missed deadlines, provided inaccurate budget projections, drove high turnover on his team, and oversaw substandard construction work." (*Id.* ¶¶ 58-60.)

In June 2024, plaintiffs initiated this action to recover their losses and prevent defendants from claiming a 50% interest in CORE: "for a mere $1.00." (*Id.* ¶ 62.)

Legal Standard

On a motion to dismiss pursuant to CPLR 3211, the court must afford the pleadings a liberal construction, "accept the facts alleged in the complaint as true, afford plaintiffs the benefit of every possible favorable inference, and determine only whether the facts alleged fit within any cognizable legal theory." (*Leon v Martinez*, 84 NY2d 83, 87-88 [1994].)

CPLR 3211(a)(1) allows a party to seek dismissal of a cause of action asserted against him because "a defense is founded upon documentary evidence." (CPLR 3211 [a] [1].) A cause of action may be dismissed pursuant to CPLR 3211(a)(1) "only if the documentary evidence submitted conclusively establishes a defense to the asserted claims as a matter of law." (*Leon v Martinez*, 84 NY2d at 88); *see also Goshen v Mut. Life Ins. Co.*, 98 NY2d 314, 326 [2002] ["motion may be appropriately granted only where the documentary evidence utterly refutes plaintiff's factual allegations, conclusively establishing a defense as a matter of law."].)

CPLR 3211(a)(7) allows a party to seek dismissal of a cause of action asserted against him because "the pleading fails to state a cause of action." (CPLR 3211 [a] [7].) When considering a motion pursuant to CPLR 3211(a)(7) "the criterion is whether the proponent of the pleading has a cause of action, not whether he has stated one."

(*Guggenheimer v Ginzburg*, 43 NY2d 268, 275 [1977].) "[B]are legal conclusions as well as factual claims which are either inherently incredible or flatly contradicted by documentary evidence" cannot survive a motion to dismiss. (*Summit Solomon & Feldesman v Lacher*, 212 AD2d 487, 487 [1st Dept 1995] [citation omitted].) However, "a court may freely consider affidavits submitted by the plaintiff to remedy any defects in the complaint." (*Leon v Martinez*, 84 NY2d 83, 88 [1994] [citing *Rovello v Orofino Realty Co.*, 40 NY2d 633, 635 (1976)].)

Discussion

1. Fraud

In the amended complaint, plaintiffs allege that "[d]efendants, through Shvo, made material misrepresentations to Plaintiffs regarding their intent and ability to provide approximately $100 million in funding for the expansion of the CORE: brand and to deliver three turnkey CORE: club locations." (NYSCEF 2, AC ¶ 74.) "Plaintiffs reasonably relied on Defendants' misrepresentations" and "would not have entered into the Option Agreement, the Note, and the LOIs had they known the truth about Shvo's intentions and the financial realities of Shvo Entities." (*Id.* ¶¶ 76-77.) Defendants move to dismiss plaintiffs' fraud claim because (i) it is contradicted by the parties' written agreements, (ii) plaintiffs have not alleged justifiable reliance, (iii) the claim has not been pled with sufficient particularity, and (iv) there is no allegation of a present intent on the part of Shvo to break his promise.

"The elements of a fraud cause of action consist of a misrepresentation or a material omission of fact which was false and known to be false by the defendant, made for the purpose of inducing the other party to rely upon it, justifiable reliance of the other

party on the misrepresentation or material omission, and injury." (*Pasternack v Lab. Corp. of Am. Holdings*, 27 NY3d 817, 827 [2016] [internal citation and quotation marks omitted].) Moreover, "CPLR 3016 (b) provides that where a cause of action or defense is based upon fraud, the circumstances constituting the wrong shall be stated in detail." (*Pludeman v Northern Leasing Sys., Inc.*, 10 NY3d 486, 491 [2008] [internal quotation marks and citation omitted].)

Plaintiffs' fraud claim fails because defendant's promise to provide funding in the amount of $100 million is not an actionable statement of present fact. (*See Cimen v HQ Capital Real Estate L.P.*, 227 AD3d 587, 587 [1st Dept 2024] ["[e]xpressions of hope for the future do not constitute actionable representations of fact." (internal quotation marks and citation omitted)]; *Fin. Structures Ltd. v UBS AG,* 77 AD3d 417, 419 [1st Dept 2010] ["plaintiffs allege a misrepresentation of future intent rather than a misrepresentation of present fact, which is not sustainable as a cause of action separate from breach of contract" (citation omitted)].)

Moreover, plaintiffs fail to allege reasonable reliance on defendants' promise. Though plaintiffs allege that "[t]hey had no reason to doubt Shvo's assertions, given his confident pronouncements about his financial resources and commitment to the projects" (*id.* ¶ 76), plaintiffs also describe Shvo as "a real estate developer with a checkered past, including a felony conviction for tax evasion" (*id.* ¶ 39). These conflicting characterizations defeat plaintiffs' allegations of reasonable reliance. Plaintiffs also fail to allege any acts undertaken by plaintiffs to verify the accuracy of Shvo's representations. It is not reasonable for a business owner to simply rely on an investor's oral promise to make a $100 million investment in their business absent due

diligence. (*See Stuart Lipsky, P. C. v Price*, 215 AD2d 102, 103 [1st Dept 1995] [rejected a claim for fraud on a CPLR 3211(a)(7) motion where the party "had the means available to ascertain the truth, [but] nevertheless chose to rely solely upon the alleged oral representations without any effort to verify that information *via* financial statements" (citations omitted)].)

Accordingly, defendants' motion to dismiss the first cause of action for fraud is granted.

2. Breach of Contract

In the amended complaint, plaintiffs allege that defendants breached the Option Agreement by (i) failing to provide the promised $100 million in funding, (ii) exercising the option to acquire 50% of CORE: Holdings despite their material breach of the Option Agreement, (iii) failing to deliver the remaining $250,000 of the $1 million loan as promised by the Note, (iv) failing to deliver turnkey CORE: clubs in Milan, San Francisco, and New York City, and (v) failing to pay Plaintiffs $80,000 for personal expenses incurred by Shvo for use of the CORE: club in New York City. (NYSCEF 2, AC ¶ 84.) Defendants move to dismiss on the grounds that plaintiffs have failed to properly plead the elements of a breach of contract claim.

"To state a claim for breach of contract, a plaintiff must allege: (1) the parties entered into a valid agreement, (2) plaintiff performed, (3) defendant failed to perform, and (4) damages." (*VisionChina Media Inc. v Shareholder Representative Servs., LLC*, 109 AD3d 49, 58 [1st Dept 2013] [citation omitted].) Plaintiffs fail to allege the necessary elements to make out a breach of contract claim. Plaintiffs allege that on January 14, 2022 "the parties executed a Membership Interest Option Agreement (the

'Option Agreement.')." (NYSCEF 2, AC ¶ 49.) However, plaintiffs also allege that the Option Agreement was "void ab initio." (*Id.* ¶ 52.) Therefore, plaintiffs fail to allege that the parties entered into a valid agreement. Moreover, plaintiffs do not allege their performance under the Option Agreement or identify the specific provisions of the agreement that was allegedly breached. (*See Kraus v Visa Intl. Serv. Assn.*, 304 AD2d 408, 408 [1st Dept 2003] [plaintiff failed "to state a cause of action . . . [for] breach of contract . . . since plaintiff failed to allege the breach of any particular contractual provision" (citations omitted)].)

Accordingly, defendants' motion to dismiss the second cause of action for breach of contract is granted.

3. Unjust Enrichment

Plaintiffs allege that defendants have been enriched at plaintiffs' expense because they have obtained an option to acquire a 50% interest in CORE: Holdings without providing the promised $100 million funding. (NYSCEF 2, AC ¶ 87.) Moreover, plaintiffs allege that Shvo unjustly benefited from (i) the NYC Lease, (ii) the Option Agreement, and (iii) the goods and services provided to him at the CORE: club in New York City. (NYSCEF 2, FAC ¶ 87-88.) Defendants move to dismiss on the ground that the claim contradicts the parties' written agreements.

> "The basis of a claim for unjust enrichment is that the defendant has obtained a benefit which in 'equity and good conscience' should be paid to the plaintiff. . . . [U]njust enrichment is not a catchall cause of action to be used when others fail. It is available only in unusual situations when, though the defendant has not breached a contract nor committed a recognized tort, circumstances create an equitable obligation running from the defendant to the plaintiff. Typical cases are those in which the defendant, though guilty of no wrongdoing, has received money to which he or she is not entitled. An unjust enrichment claim is not available where it simply duplicates, or replaces, a conventional contract or tort

> claim." (*Corsello v Verizon NY, Inc.*, 18 NY3d 777, 790, [2012] [citations omitted].)

The law is clear that "a cause of action for unjust enrichment cannot be maintained where there is a written agreement governing the subject matter at issue." (*111 W. 57th Inv. LLC v 111 W57 Mezz Inv. LLC*, 220 AD3d 435, 437 [1st Dept 2023] [citation omitted].) Therefore, to the extent plaintiffs' unjust enrichment claims are governed by the Option Agreement and the NYC Lease, these claims must be dismissed as to all defendants. (*Id.*)

However, the unjust enrichment claim against Shvo for unpaid goods and services provided to him at the CORE: club in New York City survives. Plaintiffs' allege that Shvo

> "has racked up an $80,000 tab by using CORE:'s restaurant and events spaces, which he has refused to pay. These have included an event for his child's school (The Ramaz School) during a busy 2023 holiday season, a weekend event for a child's birthday party, and weekly religious group meetings for 10-15 people plus food and beverage." (NYSCEF 2, AC ¶ 67.)

Because Shvo is not a member of CORE (*id.* ¶ 69), Shvo's use of club privileges is not governed by a membership agreement (*see id.*), and plaintiffs may therefore proceed on a quasi-contract theory such as for unjust enrichment. (*See Ashwood Capital, Inc. v OTG Mgt., Inc.*, 99 AD3d 1, 4 [1st Dept 2012] ["[o]nly where the contract does not cover the dispute in issue may a plaintiff proceed upon a quasi-contract theory of unjust enrichment" (citation omitted)].) Plaintiffs have sufficiently alleged the elements of an unjust enrichment claim.

In response, defendants argue that plaintiffs' claim against Shvo for use of club privileges "is not an unjust enrichment claim, but rather a breach of an agreement to pay a restaurant tab, but, notably, Plaintiffs fail to provide a copy of that tab covering the

alleged expenses incurred by Shvo." (NYSCEF 4, MOL at 17 n 7.) Defendants have provided no legal basis for its argument. As this is a motion to dismiss, defendants' demand for evidence is premature.

Accordingly, defendants' motion to dismiss the third cause of action for unjust enrichment is granted as to the claims that defendants have unjustly benefited from the NYC Lease and the Option Agreement but denied as to the claim against Shvo for goods and services provided to him at the NYC CORE: club.

4. Rescission

Plaintiffs seek the remedy of recission of the Option Agreement and the San Francisco lease due to defendants' fraud in the inducement. (NYSCEF 2, AC ¶ 93.) Because the court previously dismissed plaintiffs' fraud claim (*see supra* at 5-7), plaintiff's claim for recission based on fraud cannot independently be maintained. (*See Da Silva v Musso*, 53 NY2d 543, 550 [1981] ["one who signs a document is, absent fraud or other wrongful act of the other contracting party, bound by its contents"].)

Accordingly, the motion to dismiss the fourth cause of action for recission is granted.

5. Undue Influence

Plaintiff further alleges that Shvo exerted undue influence "to secure agreements that were highly favorable to him and ultimately detrimental to Plaintiffs' interests." (NYSCEF 2, FAC ¶ 97.) According to plaintiffs, Shvo's undue influence is evidenced by his actions (i) exploiting business aspirations, (ii) making false promises and misrepresentations, (iii) manipulating the Loan Agreement, (iv) engaging in self-dealing, and (v) exploiting unequal experience. (NYSCEF 2, FAC ¶ 98.) Defendants move to

dismiss the undue influence claim, arguing that plaintiffs have failed to plead a cognizable vulnerability that could have given defendants the opportunity to exercise undue influence.

"[T]he elements of an undue influence claim . . . are motive, opportunity, and the actual exercise of undue influence." (*Salitsky v D'Attanasio*, 214 AD3d 567, 568 [1st Dept 2023] [citation omitted].) Specifically,

> "[i]t must be shown that the influence exercised amounted to a moral coercion, which restrained independent action and destroyed free agency . . . a coercion produced by importunity, or by a silent resistless power which the strong will often exercises over the weak and infirm, and which could not be resisted, so that the motive was tantamount to force." (*In re Will of Walther*, 6 NY2d 49, 53-54 [1959] [internal quotation marks and citation omitted].)

Because "direct proof of undue influence is rare, its elements may be established by circumstantial evidence." (*Matter of Kotick v Shvachko*, 130 AD3d 472, 473 [1st Dept 2015] [citation omitted].)

Here, plaintiffs' portrayal of Shvo's promises as "alluring" falls short of an allegation of moral coercion. (NYSCEF 2, ¶ 41.)

Accordingly, defendants' motion to dismiss plaintiffs' fifth cause of action for undue influence is granted.

6. Reformation

As a remedy for Shvo's undue influence and breach of fiduciary duties plaintiffs seek reformation of the NYC Lease by reducing the rent to fair market value. (NYSCEF 2, AC ¶ 102.) Plaintiffs also allege that reformation of the Option Agreement is warranted due to the "imbalance in bargaining power between the parties, with Shvo exploiting his perceived expertise and [p]laintiffs' relative lack of experience in real estate development to exert undue influence" and "Shvo's conflict of interest and self-dealing

conduct." (*Id.* ¶ 103.) Defendants move to dismiss plaintiffs claim on the grounds that it is premised on the exercise of undue influence.

"A claim for reformation, generally, must be based on an allegation of mutual mistake or fraudulently induced, unilateral mistake. Where such exists, the court under appropriate circumstances is justified in reforming the contract so as to make it conform to the agreement actually made and intended." (*Surlak*, 95 AD2d at 380 [2d Dept 1983] [internal quotation marks and citations omitted].) However, "there is a heavy presumption that a deliberately prepared and executed written instrument [manifests] the true intention of the parties . . . [and] [t]he proponent of reformation must [thus] show in no uncertain terms, not only that mistake or fraud exists, but exactly what was really agreed upon between the parties." (*Chimart Assocs. v Paul*, 66 NY2d 570, 574 [1986] [internal quotation marks and citations omitted].)

NYC Lease

Plaintiffs allege that "Shvo secured a lease on behalf of the Plaintiffs at 711 Fifth Avenue in New York City with rent terms that were simply unconscionable" because Shvo "stood to benefit directly from the exorbitant rent charged to the [p]laintiffs." (*Id.* ¶ 52). These allegations do not amount to a claim of mutual mistake. Moreover, to the extent these allegations are based on defendants' allegedly fraudulent conduct or undue influence, the court has already rejected the sufficiency of plaintiffs' causes of action for fraud and undue influence. (*See supra* at 5-7, 11-12.) The reformation claim thus fails on the same grounds.

Option Agreement

While plaintiffs allege that the Option Agreement "deviated significantly from the initial understanding between the parties" (NYSCEF 2, AC ¶ 49), plaintiffs do not allege that this was due to a mutual mistake, but instead, that Shvo "did so with scienter and in furtherance of his actual goal of capturing a 50% stake in the [p]laintiffs' business" (*id.* ¶ 52). As previously explained, plaintiffs' claims for fraudulent inducement and undue influence fail. (*See supra* at 5-7, 11-12.) Therefore, to the extent that plaintiffs seek reformation of the Option Agreement based on defendants' allegedly fraudulent conduct and undue influence, this claim similarly fails.

Accordingly, the motion to dismiss the sixth cause of action for reformation is granted.

7. Declaratory Relief

Plaintiffs allege that defendants' material breaches of contract render the Option Agreement null and void. (NYSCEF 2, AC ¶ 106.) Accordingly, plaintiffs request that this Court declare that (i) "the Option Agreement is null and void," (ii) "Shvo's purported exercise of the Option is null and void," (iii) "Defendants have no right, title, or interest in CORE: Holdings," (iv) "the Promissory Note is wholly unenforceable on the grounds of usury," and (v) "the San Francisco [lease] is deemed null and void." (*Id.* ¶ 107.)

CPLR 3001 allows a court to "render a declaratory judgment having the effect of a final judgment as to the rights and other legal relations of the parties to a justiciable controversy whether or not further relief is or could be claimed." (CPLR 3001.) A declaratory judgment is an equitable remedy that is generally only available where there is no adequate remedy at law. (*See Boyle v Kelley*, 42 NY2d 88, 91 [1977].) Having found that plaintiffs fail to make out a claim for breach of contract and fraudulent

inducement, plaintiffs' request for an equitable remedy is permissible. Moreover, because defendants fail to make any arguments in support of its motion to dismiss plaintiffs' declaratory judgment claim (*see generally* NYSCEF 4, MOL), defendants' motion to dismiss plaintiffs' seventh cause of action is denied, except that the request for a declaration that the Note is usurious is dismissed.[2]

8. Accounting

Plaintiffs request that defendants be required to (i) provide plaintiffs with complete records, (ii) account all monies advanced, and (iii) detail and explain the designated purposes for such funds. (*See* NYSCEF 2, AC ¶¶ 109-117.) Defendants move to dismiss plaintiffs' cause of action, arguing that the lack of a fiduciary relationship between the parties preclude a duty on the part of defendants to account for plaintiffs' property.

"The mere existence of a fiduciary relationship gives rise a claim for an accounting." (*Dawes v J. Muller & Co.*, 176 AD3d 473, 474 [1st Det 2019] [citation omitted].)

> "A fiduciary relationship arises between two persons when one of them is under a duty to act for or to give advice for the benefit of another upon matters within the scope of the relation. Put differently, [a] fiduciary relation exists when confidence is reposed on one side and there is resulting superiority and influence on the other. Ascertaining the existence of a fiduciary relationship inevitably requires a fact-specific inquiry." (*Roni LLC v Arfa*, 18 NY3d 846, 848 [2011] [internal quotation marks and citations omitted].)

[2] The Court dismisses plaintiffs' eleventh cause of action for usuary (*see* analysis below) and dismisses the claim for declaratory relief on the same grounds.

Where plaintiff fails to allege the existence of such a fiduciary relationship, there is no right to an accounting. (*See Abacus Fed. Sav. Bank v Lim*, 75 AD3d 472, 474 [1st Dept 2010].)

Plaintiffs allege in the amended complaint that the Option Agreement and the NYC Lease gave rise to a fiduciary relationship between plaintiffs and defendants. With respect to the NYC Lease, "an arm's length transaction between a landlord and a tenant, as existed here, does not create a fiduciary relationship." (*Clarke v Fifth Ave. Dev. Co., LLC*, 211 AD3d 460, 461 [1st Dept 2022].) Similarly, the Option Agreement – which gives defendant BH EJ CORE LLC an option to purchase a membership interest in plaintiff CORE Global Holdings LLC in consideration of a loan – does not create a fiduciary relationship because there is "generally, no fiduciary obligation in a contractual arm's length relationship between a debtor and a note-holding creditor." (*Oddo Asset Mgt. v Barclays Bank PLC*, 19 NY3d 584, 593 [2012] [internal quotation marks and citations omitted].) Moreover, a "conventional business relationship, without more, is insufficient to create a fiduciary relationship." (*Saul v Cahan*, 153 AD3d 947, 949 [2d Dept 2017] [internal quotation marks and citation omitted].) Here, plaintiffs fail to allege any special circumstances that transform the business relationship between plaintiffs and defendants into a fiduciary one. (*Saul*, 153 AD3d at 949.) Because plaintiffs fail to allege that a fiduciary relationship existed between plaintiffs and defendants, plaintiffs lack standing to assert a cause of action for an accounting. (*Feiner v Ostreicher*, 241 AD3d 1281, 1283 [2d Dept 2025].)

Accordingly, defendants' motion to dismiss plaintiffs' eight cause of action for an accounting is granted.

9. Breach of Fiduciary Duties

Plaintiffs allege that defendants owed plaintiffs fiduciary duties of loyalty, good faith, and fair dealing based on the joint venture relationship that existed between plaintiffs and defendants. (NYSCEF 2, FAC ¶ 120-21.) Plaintiffs further assert that defendants breached their fiduciary duties because Shvo (i) engaged in self-dealing, (ii) failed to disclose his intention to claim a 50% stake in CORE:, and (iii) engaged in opportunistic conduct. (*Id.* ¶ 122.) Defendants seek to dismiss plaintiffs' cause of action on the grounds that plaintiffs failed to adequately plead the existence of a joint venture relationship and, therefore, no fiduciary duties are owed.

A joint venture relationship exists where there are "acts manifesting the intent of the parties to be associated as joint venturers, mutual contribution to the joint undertaking through a combination of property, financial resources, effort, skill or knowledge, a measure of joint proprietorship and control over the enterprise, and a provision for the sharing of profits and losses." (*Lebedev v Blavatnik*, 193 AD3d 175, 185 [1st Dept 2021] [internal quotation marks and citation omitted].)

Plaintiffs allege that Shvo "is a real estate developer who presented himself to Plaintiffs a partner with resources and expertise to facilitate the expansion of the CORE: brand." (NYSCEF 2, AC ¶ 36.) Other than this allegation, plaintiffs fail to allege any facts to support a conclusion that the parties manifested an intent "to be associated as joint venturers." In fact, the documentary evidence portrays the relationship between plaintiffs and defendants as that between a landlord and tenant, and between a debtor and creditor. (*See* NYSCEF 7, Term Sheet; NYSCEF 8, San Francisco Lease,

NYSCEF 10, Option Agreement; NYSCEF 11, Promissory Note; NYSCEF 13, Commencement Date Agreement; NYSCEF 19, NYC Lease.)

Similarly, there is no allegation in the amended complaint that plaintiffs and defendants shared profits and losses. "[A] mutual promise or undertaking of the parties to share in the profits of the business and submit to the burden of making good the losses" is "[a]n indispensable essential of a . . . joint venture." (*Lebedev*, 193 AD3d at 185-86 [internal quotation marks and citations omitted].) Absent a finding of a joint venture, the claim for breach of fiduciary duties cannot be maintained. (*IPA Asset Mgt., LLC v Schuman*, 239 AD3d 619, 623 [2d Dept 2025] ["[s]ince the fiduciary duties the defendants allegedly owed to the plaintiff were founded upon duties owed under the [purported] . . . joint venture relationship, the defendants were [] entitled to dismissal of the causes of action to recover damages for breach of fiduciary duty." (internal quotation marks and citations omitted].)

Accordingly, defendants' motion to dismiss plaintiffs' ninth cause of action for breach of fiduciary duties is granted.

10. Prima Facie Tort

During the oral argument on this motion to dismiss, plaintiffs withdrew this cause of action. (NYSCEF 116, tr at 25: 2-3.) Accordingly, plaintiffs' cause of action for prima facie tort is permitted to be withdrawn.

11. Usury

Plaintiffs allege in the amended complaint that the Note executed on January 14, 2022, is usurious because its rate of interest, when compounded monthly, exceeds the maximum allowable interest rate under New York law. (NYSCEF 2, AC ¶ 130.)

Defendants move to dismiss plaintiffs' usuary claim on the ground that the Note's interest rate is not usurious under New York law.

Plaintiffs fail to allege that the Note's interest is illegally high. The Note includes a 10% base rate and a 4% default rate, which puts the effective rate at 14%. (NYSCEF 11, Promissory Note §§ 2, 10.) Even when accounting for the monthly compounding set forth by the Note, which is itself not usurious (*Giventer v Arnow*, 37 NY2d 305, 308 [1975]), the effective interest rate exceeds neither the 25% criminal maximum (General Obligations Law § 5-521; Penal Law § 190.40) nor the 16% civil maximum (General Obligations Law § 5-501; Banking Law § 14-a). Compounded monthly, the 10% base rate results in an effective annual interest rate of 10.47%. Adding the 4% default rate and compounding 14% monthly, the effective annual interest rate is 14.93%.

Plaintiffs further allege that "the Note allows for the imposition of various fees and costs, including late charges and attorneys' fees, which, when added to the interest charges, render the Note undeniably usurious." (NYSCEF 2, AC ¶ 130.) These allegations also fail. First, the Note does not set forth any "late charges" other than the 4% default rate. As explained above, the default rate does not bring the effective interest rate above the statutory maximums. Second, though the Note provides that "[i]n the event any legal action or proceeding is required to enforce or interpret any provision of this Note, Borrower shall pay to Lender upon demand, all reasonable costs of collection and reasonable attorney's fees incurred by Lender in connection therewith" (NYSCEF 11, Promissory Note § 22), the law is clear that "a borrower may pay reasonable expenses attendant on a loan without rendering the loan usurious." (*Lloyd Capital Corp. v Pat Henchar, Inc.*, 80 NY2d 124, 127 [1992] [citations omitted].)

Accordingly, defendants' motion to dismiss plaintiffs' eleventh cause of action for usury is granted.

12. Misuse of Legal Process

Plaintiffs allege in the amended complaint that defendants "have used the courts for an improper purpose and without any legitimate basis in law." (NYSCEF 2, AC ¶ 136.) Specifically, plaintiffs assert that defendants' lawsuit to enforce the January 14, 2022 Note (*see BH EJ Core LLC v CORE Global Holdings LLC*, Index. No. 652857/2024), constitutes an "abuse of process." (*Id.* ¶ 135.) Defendants move to dismiss plaintiff's claim on the grounds that the initiation of the civil action to recover on the Note was justified, and moreover, the mere initiation of a civil action cannot form the basis of a misuse of legal process claim.

"Abuse of process has three essential elements: (1) regularly issued process, either civil or criminal, (2) an intent to do harm without excuse or justification, and (3) use of the process in a perverted manner to obtain a collateral objective." (*Lynn v McCormick*, 153 AD3d 688, 688 [2d Dept 2017] [internal quotation marks and citations omitted].) Under New York law "[t]he mere commencement of a lawsuit cannot serve as the basis for a cause of action alleging abuse of process." (*Id.*; *see also Curiano v Suozzi*, 63 NY2d 113, 116 [1984].)

Plaintiffs' claim fails on the ground that commencing a lawsuit is, itself, not sufficient to constitute abuse of process. Moreover, this court *granted* defendant BH EJ

CORE LLC's motion for summary judgment in lieu of complaint in the related action.[3] This suggests that defendant's claim is valid.

Accordingly, defendants' motion to dismiss plaintiffs' twelfth cause of action for misuse of legal process is granted.

13. Breach of the Implied Covenant of Good Faith and Fair Dealing

Plaintiffs allege in the amended complaint that defendants breached the implied covenant of good faith and fair dealing "by engaging in a pattern of deceitful and opportunistic conduct, designed to deprive Plaintiffs of the benefits of their bargain and to enrich Shvo personally." (NYSCEF 2, AC ¶ 139.) Defendants argue that plaintiffs' claim that the Option Agreement is null and void negates a claim for breach of the implied duty of good faith and fair dealing because such a claim must be based on an existing contract.

"Because a breach of the covenant of good faith and fair dealing is a breach of the contract itself," plaintiffs must plead the existence of a valid contract to maintain a cause of action for breach of the implied covenant. (*Parlux Fragrances, LLC v S. Carter Enters., LLC*, 204 AD3d 72, 92 [1st Dept 2022].) Here, plaintiffs allege that "the option agreement, loan, and promissory note are void ab initio." (NYSCEF 2, AC ¶ 52.) Accordingly, there can be no concurrent allegation that defendants breached the implied covenant of good faith and fair dealing with respect to these agreements.

Accordingly, defendants' motion to dismiss plaintiffs' thirteenth cause of action for breach of the implied covenant of good faith and fair dealing is granted.

[3] *See* NYSCEF 25, Decision and Order [mot. seq. no. 001] in related action captioned at *BH EJ Core LLC v CORE Global Holdings LLC*, Index. No. 652857/2024.

14. Negligent Misrepresentation

Plaintiffs allege that Shvo "h[eld] himself out as a self-proclaimed 'best-in class' seasoned real estate developed with vast experience in developing luxury properties" and therefore, Shvo owed plaintiffs "a duty of care to provide accurate and reliable information regarding the scope, budget, and feasibility of the proposed CORE: club projects." (NYSCEF 2, AC ¶ 142.) Shvo allegedly breached this duty by negligently making false statements and misrepresentations to plaintiffs regarding (i) his intent to invest $100 million in the expansion of the CORE: brand, (ii) personally overseeing the development of the NYC club, and (iii) the $22 million budget for the NYC club being sufficient to deliver a turnkey club and plaintiff not being responsible for any cost overruns. (*Id.* ¶ 143.) Defendants move to dismiss plaintiffs' negligent misrepresentation claim on the grounds that plaintiffs fail to allege a special or privity-like relationship, and regardless, the claim is duplicative of plaintiff's breach of contract claim.

"A claim for negligent misrepresentation requires the plaintiff to demonstrate (1) the existence of a special or privity-like relationship imposing a duty on the defendant to impart correct information to the plaintiff; (2) that the information was incorrect; and (3) reasonable reliance on the information." (*J.A.O. Acquisition Corp. v Stavitsky*, 8 NY3d 144, 148 [2007] [citations omitted].) Here, plaintiffs' claim fails because "[a]ny alleged reliance on defendant[s'] superior knowledge and expertise . . . ignores the reality that the parties engaged in arm's-length transactions pursuant to contracts between sophisticated business entities that do not give rise to fiduciary duties." (*GSCP VI EdgeMarc Holdings, L.L.C. v ETC Northeast Pipeline, LLC*, 192 AD3d 454, 456 [1s

Dept 2021] [internal quotation marks and citation committed].) Where "there is no special relationship that required defendant[s] to impart any information[,]" a negligent misrepresentation claim cannot be maintained. (*Id.*)

Accordingly, defendants' motion to dismiss plaintiffs' fourteenth cause of action for negligent misrepresentation is granted.

15. Negligence

Plaintiffs further allege that defendants "h[eld] themselves out as experienced real estate developers and project managers" and, therefore, owed plaintiffs "a duty of care to exercise reasonable skill and diligence in the development and construction of the New York City Core: club." (NYSCEF 2, AC ¶ 147.) Defendants allegedly breached this duty by negligently mismanaging the project, as evidenced by the failure to (i) conduct adequate due diligence and underwriting, (ii) provide plaintiffs with accurate and timely budget projections and progress reports, (iii) properly supervise and manage the construction process, and (iv) address and remedy deficiencies in the build-out. (*Id.* ¶ 148.) Defendants seek to dismiss plaintiffs' cause of action, maintaining that it is duplicative of plaintiffs' cause of action for breach of contract.

"[A] simple breach of contract is not to be considered a tort unless a legal duty independent of the contract . . . has been violated . . . [M]erely charging a breach of a duty of due care . . . does not, without more, transform a . . . breach of contract into a tort claim." (*Inspirit Dev. & Constr., LLC v GMF 157 LP*, 203 AD3d 430, 431 [1s Dept 2022] [quotation marks and citation omitted].)

Here, plaintiffs suffered neither personal injury nor property damage. Instead, plaintiffs are seeking enforcement of the bargain, namely the construction of the NYC

CORE: club as detailed in the parties' July 28, 2021 Technical Services Agreement (TSA). (NYSCEF 138.) Therefore, "the action should proceed under a contract theory." (*Sommer v Federal Signal Corp.*, 79 NY2d 540, 552 [1992] [dismissed tort claim].) This is further supported by the fact that plaintiffs' negligence allegations are almost identical to its allegations of defendants' breach of the TSA. (*Compare* NYSCEF 2, AC ¶ 148 *with* ¶ 157; *see also Dormitory Auth. of the State of NY v Samson Const. Co.*, 30 NY3d 704, 711-12 [2018] [dismissed negligence claim as duplicative where "the negligence allegations in the complaint are . . . merely a restatement, albeit in slightly different language, of . . . the cause of action for breach of contract" (internal quotation marks and citations omitted)].)

Accordingly, defendants' motion to dismiss plaintiffs' fifteenth cause of action for negligence is granted.

16. Gross Negligence

Plaintiffs allege that defendants owed plaintiffs a duty "to refrain from engaging in grossly negligent conduct" and that defendants breached this duty by (i) recklessly underestimating the cost of the NYC CORE: club, (ii) using deceptive bait-and-switch tactics with regard to project design, (iii) intentionally removing the Head of Design from overseeing the project, (iv) relying on inexperienced project managers, (v) engaging vendors with potential conflicts of interest, (vi) allowing construction to proceed with substandard materials and workmanship, and (vii) failing to address punch list deficiencies. (NYSCEF 2, AC ¶ 152-53.) Defendants seek to dismiss plaintiffs' cause of action, maintaining that it is duplicative of plaintiffs' cause of action for breach of contract.

"Gross negligence is conduct that evinces a reckless disregard for the rights of others or smacks of intentional wrongdoing." (*Hartford Ins. Co. v Holmes Protection Group*, 250 AD2d 526, 527 [1st Dept 1998] [internal quotation marks and citation omitted].) Even if defendants' alleged conduct rises to the level of gross negligence, "allegations that a breach of contract occurred as a result of gross negligence does not give rise to a duty independent of the contractual relationship." (*Abacus Fed. Sav. Bank v ADT Sec. Servs., Inc.*, 18 NY3d 675, 684-85 [2012] [citations omitted].) Because plaintiffs' allegations of gross negligence are mostly a restatement of the obligations asserted in the cause of action for breach of the TSA (*compare* NYSCEF 2, AC ¶ 153 *with* ¶ 157), the action is duplicative of plaintiffs' cause of action for breach of contract and should proceed under a contract theory rather than as a tort claim. (*See Sommer*, 79 NY2d at 552 [1992]; *Dormitory Auth. of the State of NY*, 30 NY3d at 711-12 [2018]; *Clark-Fitzpatrick, Inc. v Long Island R. Co.*, 70 NY2d 382, 390 [1987].)

Accordingly, defendants' motion to dismiss plaintiffs' sixteenth cause of action for gross negligence is granted.

17. Breach of the Technical Services Agreement

Plaintiffs allege that defendant 711 Fifth Avenue Principal Owner LLC breached the Technical Services Agreement (TSA) by (i) failing to construct the NYC CORE: club in accordance with the approved plans and specifications, (ii) engaging in a massive value engineering exercise to reduce the scope and quality of the project, (iii) failing to provide Plaintiff with accurate and timely information regarding the project, and (iv) failing to deliver a turnkey CORE: club. (NYSCEF 2, AC ¶ 157.) Plaintiffs further allege that defendant Shvo is jointly and severally liable for the breaches of the TSA because he

was acting as an agent for defendant 711 Fifth Avenue Owner. (*Id.* ¶ 158.) Defendants move to dismiss plaintiffs' cause of action on the grounds that plaintiff`s acceptance of the premises pursuant to the Commencement Date Agreement defeats any claims for breach of the TSA.

Generally, "a valid release constitutes a complete bar to an action on a claim which is the subject of the release." (*Global Mins. & Metals Corp. v Holme*, 35 AD3d 93, 98 [1st Dept 2006]; *see also* CPLR 3211 [a] [5] [a party may move to dismiss a cause of action because of a release].) Here, defendants fail to establish that the Commencement Date Agreement releases defendant 711 Fifth Avenue Owner LLC from its obligations pursuant to the TSA. First, the parties to the two agreements are not the same. The TSA is a contract between 711 Fifth Avenue Principal Owner LLC and CORE Global Management LLC. (NYSCEF 138, Technical and Development Services Agreement [TSA] at 1.) Meanwhile, the Commencement Date Agreement is a contract between 711 Fifth Avenue Principal Owner LLC and CORE 5th Avenue LLC. (NYSCEF 13, Commencement Date Agreement at 1.) It is unclear how CORE 5th Avenue LLC could execute a release on behalf of CORE Global Management LLC.

Second, the TSA is not the subject matter of the Commencement Date Agreement, and, therefore, the Commencement Date Agreement cannot be a release of the TSA. While the Commencement Date Agreement establishes the NYC lease's commencement, rent commencement, and expiration dates (NYSCEF 13 § 1), the TSA sets forth 711 Fifth Avenue Owner LLC's engagement of CORE Global Management LLC "as an independent contractor" to assist "in the planning, design, development and construction" of the NYC CORE: club (NYSCEF 138, Recital C). Though the TSA

concerns construction of a club at the premises subject to the NYC lease, this does not automatically make the TSA the subject of the Commencement Date Agreement. Therefore, defendants have failed to satisfy its burden of establishing that it has been released from any claims pursuant to the TSA. (*See Benjamin v Kahen*, 241 AD3d 482, 483-84 [2d Dept 2025].)

Accordingly, defendants' motion to dismiss plaintiffs' seventeenth cause of action for breach of the TSA is denied.

18. Violation of New York Civil Rights Law Section 51

During oral argument of this motion to dismiss, plaintiff withdrew this cause of action. (NYSCEF 116, tr at 24:25-25:2.) Accordingly, plaintiffs' cause of action for violation of New York City Civil Rights Law § 51 is permitted to be withdrawn.

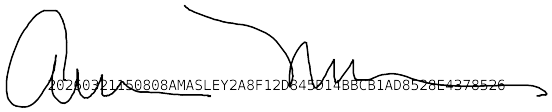
Accordingly, it is

ORDERED that motion sequence 001 is granted, in part, to the extent that (i) the first, second, fourth, fifth, sixth, eight, ninth, eleventh, twelfth, thirteenth, fourteenth, fifteenth, and sixteenth causes of action are dismissed, (ii) the third cause of action is dismissed, in part, to the extent it is premised on the NYC Lease and the Option Agreement, (iii) the seventh cause of action is dismissed as to the claim that the Note is usurious, and (iv) the tenth and eighteenth causes of action are permitted to be withdrawn and are dismissed; and it is further

ORDERED that motion sequence 001 is denied, in part, to the extent that (i) the third cause of action survives, in part, against defendant Shvo to the extent it alleges unjust enrichment for unpaid goods and services received at the NYC CORE: club and (ii) the seventh cause of action for declaratory judgment survives against all defendants,

except as to the claim that the Note is usurious, and (iii) the seventeenth cause of action for breach of the TSA survives as to defendant 711 Fifth Avenue Principal Owner LLC; and it is further

ORDERED that within 20 days of the date of this decision, defendants shall answer the amended complaint.



3/21/2026
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