SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK: IAS PART THREE

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119 SPRING LLC,

Plaintiff,

-against-

Index No. 652593/2013
Motion Date: 3/13/2014
Motion Seq. No.: 002, 003

119 SPRING STREET COMPANY, LLC, ESILDA BUXBAUM, JOSEPHINE CORBO HARRIS, OLIVER LEWIS HARRIS, LYNN REISER-HECHTMAN, individually and as EXECUTOR OF THE ESTATE OF MARTIN HECHTMAN, EDWARD E. O'CONNELL, JILL A. O'CONNELL, TAR BEACH CLUB, INC. and DOV HECHTMAN,

Defendants.

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BRANSTEN, J.

Motion sequence numbers 002 and 003 are consolidated for disposition.

This action concerns Plaintiff 119 Spring LLC's attempt to purchase Defendants 119 Spring Street Company, LLC (the "LLC"), Esilda Buxbaum, Josephine Corbo Harris, Oliver Lewis Harris, Lynn Reiser-Hechtman, individually and as Executor of the Estate of Martin Hechtman, Edward E. O'Connell, Jill A. O'Connell's (collectively, the "Individual Defendants") interests in a property located at 119 Spring Street in Manhattan. Plaintiff asserts claims against the LLC and the Individual Defendants for breach of contract, specific performance, and injunctive relief, all of which stem from a

May 2013 Letter of Intent concerning the proposed sale. Plaintiff also brings claims against Defendant Dov Hechtman, alleging that he tortiously interfered with the proposed sale.

The LLC and the Individual Defendants (collectively, the "LLC Defendants") now jointly move to dismiss the Complaint, pursuant to CPLR 3211(a)(1) and (7). In addition, Defendant Hechtman seeks dismissal of the two claims asserted against him. Plaintiff opposes both motions. For the reasons that follow, both motions to dismiss are granted in part and denied in part.

I. Background

The facts of this matter were discussed extensively in the Court's recent December 2, 2013 decision ("December 2013 Decision"), denying Plaintiff's motion for a preliminary injunction. Thus, only details necessary to the instant motions to dismiss are referenced herein.

This litigation stems from Plaintiff's negotiations with Defendants regarding the building located at 119 Spring Street in Manhattan (the "Building"). The Building, which is owned by a cooperative named Tar Beach Club, LLC ("Tar Beach"),[1] includes retail

[1] Tar Beach was initially named as a defendant in this action; however, a stipulation of discontinuance was filed as to Tar Beach on September 27, 2013 (Docket No. 55).

space on the ground floor that is leased to Defendant 119 Spring Street Company, LLC (the "LLC"). The LLC is owned by the Individual Defendants, and the lease of the ground floor retail space is referred to by the parties as the "master lease."

Defendants assert that the LLC, through its members, the Individual Defendants, began to consider the sale of the master lease in 2012. After negotiations with Plaintiff, the LLC agreed upon a letter of intent for a proposed transaction for the Building's retail space on May 21, 2013 (the "May LOI").

A. *May LOI*

The terms of the May LOI are at the core of this action. The May LOI stated a purchase price of $14,000,000 for the acquisition of "all of the issued and outstanding membership interests in 119 Spring Street Company, LLC" (the "Sale Price Provision"). *See* Compl. Ex. A at 1 (May LOI). In addition, the May LOI contained the following provisions:

- "the parties agree to negotiate, in good faith, additional terms of the Purchase to be incorporated in a formal purchase and sale agreement(s) among Purchase and the Individual Sellers (the "Purchase Agreement") by July 17, 2013" (the "Good Faith Requirement");

- "[w]ithin three (3) business days after the full execution of this letter agreement by all parties hereto, Purchaser shall deposit the amount of $700,000 (the "Deposit") in immediately available funds into an account to be specified ..." (the "Deposit Paragraph");

- "[t]he parties agree that they have dealt with no brokers, agents or finders in connection with the contemplated transactions, except for Marshall Real Estate ("Broker")" (the "Broker Paragraph"); and,

- "the Company agrees (for itself and the Individual Sellers) to maintain complete confidentiality and that neither the Company nor the Individual Sellers will solicit or enter into any contract, or into any contract negotiations, regarding the Company, the [Building] and/or [the master lease] ... with any other party commencing on the date of this letter agreement and continuing for a period ending on ... July 17, 2013..." (the "Exclusivity Paragraph").

Id. at 1-2.

In the event the parties failed to enter into a purchase agreement by July 17, 2013 "for any reason whatsoever," the May LOI provides that the LOI "shall be deemed null and void, ab initio, and the parties shall have no further obligations hereunder, except for the paragraphs entitled Deposit, Broker and Exclusivity (the 'Binding Provisions')." *Id.* at 2. Notably, this provision does not include the "Good Faith Requirement" among the so-called "Binding Provisions" that survive the expiration of the May LOI.

While the "Good Faith Requirement" was not included as a "Binding Provision" surviving termination of the May LOI, the letter of intent goes on to state that the agreement is "non-binding," except for "the Binding Provisions *and the provisions regarding the parties' obligations to negotiate, in good faith, the terms of the Purchase Agreement until July 17, 2013* ..." *Id.* at 3 (emphasis added).

B. *Post-LOI Negotiations*

Three days after the May LOI was signed, LLC counsel sent a draft purchase agreement to Plaintiff's counsel. The parties sharply dispute what happened after this draft was sent. However, since the motion presently before the Court is a motion to dismiss, the Court will focus on Plaintiff's pleading.

1. Plaintiff's Contentions

Plaintiff contends that it was prepared to sign the purchase agreement when Defendants advised that they wanted to structure the transaction differently. (Compl. ¶ 24.) Defendants purportedly sought to have Plaintiff purchase the LLC's interest in the master lease, instead of purchasing the Membership Interests, as contemplated in the May LOI. *Id.* Since Plaintiff did not object to the change, Plaintiff's counsel prepared a new draft and sent it to LLC counsel on June 21, 2013. *Id.* ¶ 25. After this new draft was sent, Defendants allegedly refused to proceed with the finalization of the purchase agreement and neither responded to Plaintiff's draft nor prepared a new version of the agreement. *Id.* ¶ 26. Instead, LLC counsel informed Plaintiff that "there has been a change in the thinking of the co-op which makes the draft contract that [Plaintiff's counsel] sent last week no longer applicable." *Id.* ¶ 27.

On July 2, 2013, the Individual Defendants purportedly demanded $41,000,000 for the assignment of the master lease with a 15-year extension. *Id.* ¶ 29. Although Defendants later allegedly decreased their demand to $26,000,000, Plaintiff informed Defendants that it wished to sign the draft purchase agreement circulated by LLC counsel on May 24, 2013. *Id.* ¶¶ 32-33. After the parties failed to sign a purchase agreement by July 17, 2013, LLC counsel emailed Plaintiff to notify it that the LOI was "null and void, ab initio." *Id.* ¶ 34.

C. *The Instant Action*

On July 24, 2013, Plaintiff commenced the instant action, asserting claims against the LLC Defendants for injunctive relief, specific performance, and breach of contract. In addition, Plaintiff asserted tortious interference with contract and tortious interference with prospective business relations claims against Defendant Dov Hechtman.

In conjunction with its Complaint, Plaintiff filed a motion to preliminarily enjoin Defendants from transferring their interests in the property located at 119 Spring Street in Manhattan to any entity other than Plaintiff. The Court denied Plaintiff's motion in its December 2013 Decision, which direct bearing on the instant motion, particularly the LLC Defendants' motion to dismiss Plaintiff's breach of contract claim.

II. Analysis

On a motion to dismiss a complaint for failure to state a cause of action, all factual allegations must be accepted as truthful, the complaint must be construed in a light most favorable to the plaintiffs and the plaintiffs must be given the benefit of all reasonable inferences. *Allianz Underwriters Ins. Co. v. Landmark Ins. Co.*, 13 A.D.3d 172, 174 (1st Dep't 2004). "We . . . determine only whether the facts as alleged fit within any cognizable legal theory." *Leon v. Martinez,* 84 N.Y.2d 83, 87-88 (1994). This Court must deny a motion to dismiss, "if from the pleadings' four corners factual allegations are discerned which taken together manifest any cause of action cognizable at law." *511 W. 232nd Owners Corp. v. Jennifer Realty Co.*, 98 N.Y.2d 144, 152 (2002) (internal quotation marks and citations omitted).

However, on a CPLR 3211(a)(1) motion, "[i]t is well settled that bare legal conclusions and factual claims, which are either inherently incredible or flatly contradicted by documentary evidence . . . are not presumed to be true on a motion to dismiss for legal insufficiency." *O'Donnell, Fox & Gartner v. R-2000 Corp.*, 198 A.D.2d 154, 154 (1st Dep't 1993). The court is not required to accept factual allegations that are contradicted by documentary evidence or legal conclusions that are unsupported in the face of undisputed facts. *See Zanett Lombardier, Ltd. v. Maslow*, 29 A.D.3d 495, 495 (1st Dep't 2006) (citing *Robinson v. Robinson*, 303 A.D.2d 234, 235 (1st Dep't 2003)).

Ultimately, under CPLR 3211(a)(1), "dismissal is warranted only if the documentary evidence submitted conclusively establishes a defense to the asserted claims as a matter of law." *Leon*, 84 N.Y.2d at 88.

A. *The LLC Defendants' Motion to Dismiss* (Motion Sequence 002)

The LLC Defendants seek dismissal of all claims asserted against them, namely Plaintiff's breach of contract, specific performance, and injunctive relief claims. Their dismissal arguments will be addressed in turn.

1. Breach of Contract

Plaintiff's breach of contract claims stem from three purported breaches of the LLC Defendants' obligations under the May LOI: (1) to sell their Membership interests for $14,000,000 upon agreement on the "additional terms of the purchase" (the "Sale Price Provision"); (2) to negotiate in good faith the additional terms of the purchase (the "Good Faith Requirement"); and, (3) to keep the terms of the Letter of Intent "completely confidential" and not to solicit any offers from third parties (the "Exclusivity Paragraph").

a. **Enforceability of the May LOI**

In support of dismissal, the LLC Defendants first contend that the breach of contract claim fails as a whole since the May LOI was an unenforceable agreement to agree. It is true that "a mere agreement to agree, in which a material term is left for future negotiations is unenforceable." *Joseph Martin, Jr., Delicatessen v. Schumacher*, 52 N.Y.2d 105, 109 (1981). However, the Exclusivity Paragraph and Good Faith Requirement of the May LOI were not "agreements to agree"; instead, they were provisions of the Letter of Intent that set the foundation for the parties' ongoing negotiations and left no open terms. Further, these provisions were not contingent on the execution of a later agreement. *See Amcan Holdings, Inc. v. Canadian Imperial Bank of Commerce*, 70 A.D.3d 423, 427 (1st Dep't 2010) ("[I]n determining whether the document in a given case is an enforceable contract or an agreement to agree, the question should be asked in terms of 'whether the agreement contemplated the negotiation of later agreements and if the consummation of those agreements was a precondition to a party's performance.'") (quoting *IDT Corp. v. Tyco Group, S.A.R.L.*, 13 N.Y.3d 209, 213 n.2 (1st Dep't 2009)). The parties agreed to be bound by the Exclusivity Paragraph even after the expiration of the LOI, and while there is an open question as to whether the Good Faith Requirement survived the expiration of the LOI, *see supra*, as a

threshold matter, the provision itself is enforceable as to negotiations before July 17, 2013.

The same is not true of the substantive terms of the to-be-negotiated purchase agreement. With regard to the substantive terms of the deal, the LOI contemplated the negotiation of a later purchase agreement, with the consummation of such agreement as a precondition to the closing of the deal. *See id.* The LOI expressly references the negotiation of a "formal purchase and sale agreement(s) among the Purchase and the Individual Sellers (the "Purchase Agreement") by July 17, 2013." *See* May LOI at 2. Further, the May LOI provides that either party may walk away from the deal at any time "for any reason or no reason" before the consummation of the purchase agreement, and that the LOI, with the exception of the provisions discussed above, would be rendered void ab initio if such a purchase agreement was not entered into by July 17, 2013. *Id.*

Therefore, as to the substantive terms of the purchase agreement, the May LOI is "a preliminary non-binding proposal to agree." *Joseph Martin, Jr. Delicatessen*, 52 N.Y.2d at 109. Accordingly, those portions of the May LOI addressing the substantive terms of the future purchase agreement are unenforceable.

b. **Alleged Breaches of the May LOI**

The LLC Defendants next attack the breaches claimed by Plaintiff, contending that they each fail to state a claim. As discussed above, Plaintiff's breach of contract claims stem from three purported breaches of the LLC Defendants' obligations under the Sale Price Provision, Good Faith Requirement, and Exclusivity Paragraph of the May LOI. While the alleged Good Faith Requirement and Exclusivity Paragraph breaches survive the motion to dismiss, Plaintiff's claim for breach of the Sales Price Provision is dismissed for failure to state a claim.

i. **Sales Price**

Based on the express language of the May LOI, the Sales Price Provision was rendered "null and void, ab initio" upon the parties' failure to enter into a purchase agreement by July 17, 2013. In relevant part, the May LOI provides that "[i]n the event a Purchase Agreement is not entered into between the parties by July 17, 2013 for any reason whatsoever, then this letter agreement shall be deemed null and void, ab initio, and the parties shall have no further obligations hereunder, except for the paragraphs entitled Deposit, Broker and Exclusivity (the 'Binding Provisions')." (May LOI at 2) (emphasis in original). The May LOI goes on to state that it is non-binding, except for the Binding

Provisions and the "provisions regarding the parties' obligations to negotiate, in good faith, the terms of the Purchase Agreement until July 17, 2013..." *Id.* at 3.

The Sale Price Provision is not included among the "Binding Provisions," nor is it a provision regarding the parties' obligations to negotiate in good faith. Therefore, the provision does not survive the expiration of the May LOI and cannot support a breach claim.

ii. **Exclusivity**

Conversely, the Exclusivity Paragraph is expressly included as a "Binding Provision" that survives the expiration of the May LOI. Plaintiff pleads that the LLC Defendants breached this provision by not maintaining "the complete confidentiality of the LOI" and by "solicit[ing] other offers for the Membership Interests or the Lease." (Compl. ¶¶ 30-31.) Further, Plaintiff pleads that it suffered damages. *Id.* ¶ 48. This pleading is sufficient to state a breach of contract claim. *See, e.g., Harris v. Seward Park Hous. Corp.*, 79 A.D.3d 425, 426 (1st Dep't 2010) (stating that elements of a breach of contract claim include the existence of a contract, Plaintiff's performance thereunder, Defendant's breach thereof, and resulting damages).

While the LLC Defendants contend that the pleading should be more robust, CPLR 3016(b)'s particularity requirements do not apply to breach of contract claims. *See*

Shilkoff, Inc. v. 885 Third Avenue Corp., 299 A.D.2d 253, 254 (1st Dep't 2002) ("Defendants' contention that the breach of contract cause of action is insufficiently pled would hold plaintiff to particularity in a contract pleading that is not required ..."). Therefore, the LLC Defendants' dismissal arguments lack merit and fail to provide a basis to dismiss Plaintiff's breach of contract claim as it pertains to the Exclusivity Paragraph.

iii. **Good Faith**

Finally, the LLC Defendants contend that the Good Faith Requirement cannot support a breach of contract claim. The LLC Defendants attack the claim on several fronts, arguing that the provision expired on July 17, 2013, and in the alternative, even if the provision did not expire, it is too indefinite to be enforced. In addition, the LLC Defendants maintain that Plaintiff's failure to allege that it "conveyed willingness to consummate the May LOI deal and that Defendants refused" is fatal to the claim. (LLC Defs.' Moving Br. at 9.)

First, as discussed at length in this Court's December 2013 Decision, the terms of the May LOI are ambiguous as to the survival of the Good Faith Requirement following the termination of the May LOI on July 17, 2013. Although the May LOI states that only the "Deposit, Broker and Exclusivity" provisions – defined as the "Binding Provisions" –

survive the expiration of July 17, 2013 agreement, the May LOI later carves out both the "Good Faith Requirement" and the Binding Provisions from its designation of the agreement as "non-binding." In short, the May LOI expressly excludes good faith from its definition of "Binding Provisions" but then states the double negative that all provisions except for the good faith and Binding Provisions are non-binding. These two terms thus conflict as to whether the good faith provision is binding and survives the termination of the agreement ab initio. Accordingly, given this ambiguity, the Court cannot grant the LLC Defendants' motion to dismiss. *See Telerep, LLC v. U.S. Int'l Media, LLC*, 74 A.D.3d 401, 402 (1st Dep't 2010) ("If the court concludes that a contract is ambiguous, it cannot be construed as a matter of law, and dismissal under CPLR 3211(a)(7) is not appropriate."); *see also Hambrecht & Quist Guar. Fin., LLC v. El Coronado Holdings, LLC*, 27 A.D.3d 204, 204 (1st Dep't 2006) (affirming denial of motion to dismiss where contractual language deemed ambiguous).

Next, the Court rejects the LLC Defendants' contention that the language of the Good Faith Requirement is too indefinite to be enforced. Courts routinely apply "good faith" negotiation provisions, such as the one agreed upon by the parties and included in the May LOI. For example, in *180 Water Street Association v. Lehman Brothers Holdings*, 7 A.D.3d 316, 317 (1st Dep't 2004), the First Department sustained a breach of contract claim grounded in a good faith negotiation clause, concluding that

> because the [agreement] required the parties to negotiate in good faith and only with each other toward a final lease, and to do so on an exclusive basis, plaintiff's allegation that defendant was negotiating with other landlords from the beginning suffices to state a claim for breach of an agreement to negotiate.

See also Goodstein Constr. Corp. v. City of N.Y., 67 N.Y.2d 990, 991 (1986) (sustaining breach of contract claim premised on good faith negotiation clause).

The LLC Defendants cite to one Second Department case, which rejected a good faith negotiation claim on the grounds that "no objective criteria or standards against which the defendant's efforts can be measured were stated in the LOI, and they may not be implied from the circumstances of this case." *2004 McDonald Ave. Realty, LLC v. 2004 McDonald Ave. Corp.*, 50 A.D.3d 1021, 1023 (2d Dep't 2008). Specifically, that Second Department affirmed the trial court's conclusion that a good faith negotiation claim cannot lie simply because the parties negotiated but "such negotiations failed." *2004 McDonald Ave. Realty, LLC v. 2004 McDonald Ave. Corp.*, 25 Misc.3d 1204(A), at *5 (Sup. Ct. Kings Cnty. 2007).

However, Plaintiff's claim here is not premised on the mere assertion that the negotiations failed. Instead, Plaintiff asserts that while the May LOI limited negotiations to "additional terms," the LLC Defendants treated the May LOI's purchase price as still negotiable and sought to extract additional consideration from Plaintiff. While the Court does not pass on the viability of this claim at this preliminary juncture, the Court

concludes that Plaintiff's good faith negotiation claim does not merit dismissal as "indefinite."

Finally, the LLC Defendants' contention that Plaintiff was required to plead its willingness to consummate the deal as described in May LOI lacks merit. The LLC Defendants' principally object that "Plaintiff alleges that the May 24 Draft [purchase agreement] 'was and remains acceptable to plaintiff.' But plaintiff does not say that it ever *told defendants* as much during the LOI period." *See* LLC Defs.' Moving Br. at 9 (emphasis in original). No such pleading is required to sustain Plaintiff's breach of contract on a motion to dismiss. Instead, if relevant at all to the breach of contract claim, this argument would be raised more appropriately on summary judgment. Accordingly, the LLC Defendants' motion for dismissal of Plaintiff's claim for breach of the Good Faith Requirement is denied.

2. Damages Claims

The LLC Defendants next seek dismissal of Plaintiff's request for specific performance and injunctive relief. For the reasons addressed above, the LOI is void ab initio, except for the Binding Provisions and the Good Faith Requirement for which Plaintiff has stated a claim for breach prior to July 17, 2013. Even if not void ab initio, the LOI's provisions addressing the LLC Defendants' entrance into a purchase agreement

constituted an unenforceable agreement to agree. Accordingly, Plaintiff's request for "an order of specific performance requiring the Seller Defendants to enter into the Purchase Agreement" fails on its face.

Moreover, Plaintiff's request for injunctive relief "ordering the Seller Defendants to engage in good faith negotiations based upon the $14,000,000 purchase price" likewise fails. Again, the terms of the May LOI clearly provide that as of July 17, 2013, the parties' agreement to continue negotiating the sale of the LLC's Membership Interests or the Lease expired. Further, while Plaintiff may have a claim for breach of the Good Faith Requirement and the Exclusivity Paragraph based on conduct prior to the expiration of the May LOI, such a claim is compensable by monetary damages and does not require revival of a letter of intent that Plaintiff expressly agreed would expire on July 17, 2013. *See 180 Water St. Assoc. v. Lehman Bros. Holdings*, 7 A.D.3d 316, 317 (1st Dep't 2014) (holding that claim for breach of a good faith negotiation provision in a letter of intent was limited to "out-of-pocket loss"). Therefore, Plaintiff's claim for injunctive relief is unavailing, and the LLC Defendants' motion to dismiss is granted.

The Court has considered the remainder of the LLC Defendants' arguments and finds them without merit.

B. *Defendant Dov Hechtman's Motion to Dismiss* (Motion Sequence 003)

The final two counts of the Complaint assert tortious interference with contract and tortious interference with prospective business relations claims against Defendant Dov Hechtman. In support of both claims, Plaintiff contends that Hechtman advised the Individual Defendants to breach the May LOI and not accept the agreed upon $14,000,000 purchase price. In addition, Plaintiff alleges that Hechtman disclosed the contents of the LOI and solicited interest from third parties regarding the sale of the Membership Interests or the Lease. These allegations will be examined in the context of Plaintiff's claims below.

1. Tortious Interference with Contract

To state a claim for tortious interference with contract, plaintiff must plead "the existence of a valid contract, the tortfeasor's knowledge of the contract and intentional interference with it, the resulting breach and damages." *Hoag v. Chancellor, Inc.*, 246 A.D.2d 224, 228 (1st Dep't 1998). Plaintiff has made such a pleading here with regard to the Exclusivity Paragraph. As addressed above in connection with the LLC Defendants' motion to dismiss, the Exclusivity Paragraph is enforceable. The Complaint alleges that Hechtman knew of this agreement and interfered with it by disclosing the terms of the LOI to third parties, resulting in damages. While Hechtman disputes the Complaint's

factual allegations, such disputes do not provide a basis for dismissal. *See, e.g., Laurel Hill Advisory Grp., LLC v. Am. Stock Transfer & Trust Co., LLC*, 112 A.D.3d 486, 486 (1st Dep't 2013).

At the same time, Plaintiff has not sufficiently alleged a tortious interference with contract claim with regard to Hechtman's alleged "insisting on a payment to the Cooperative and a restructuring of the transaction." (Compl. ¶ 62.) Since the May LOI was merely an agreement to agree upon the substantive terms of the purchase agreement, there was no enforceable contract with which Defendant Hechtman interfered. *See Buechner v. Avery*, 38 A.D.3d 443, 443 (1st Dep't 2007) ("The claim for tortious interference with contract was not viable absent an enforceable contract."). The same is true of Plaintiff's allegation that Hechtman "advis[ed] the [Individual Defendants] to renege on the $14,000,000 purchase price." (Compl. ¶ 62.) The Sale Price Provision was not one of the provisions to which the parties expressly held themselves bound. Instead, the Sale Price Provision was contingent on the parties' agreement to negotiate a purchase agreement and therefore is not enforceable. Thus, Plaintiff cannot state a tortious interference with contract claim based on this allegation.

As a result, Defendant Hechtman's motion to dismiss the tortious interference with contract claim is granted in part and denied in part.

2. Tortious Interference with Prospective Business Relations

"A claim for tortious interference with prospective business advantage must allege that: (a) the plaintiff had business relations with a third party; (b) the defendant interfered with those business relations; (c) the defendant acted with the sole purpose of harming the plaintiff or by using unlawful means; and (d) there was resulting injury to the business relationship." *Thome v. Alexander & Louisa Calder Found.*, 70 A.D.3d 88, 108 (1st Dep't 2009). Plaintiff's claim here fails as to the third element of the claim – the requirement to plead that Hechtman acted with the sole purpose of harming the plaintiff or by using unlawful means. The Complaint simply pleads that Hechtman "wrongly" interfered, not that Hechtman's sole purpose was to harm Plaintiff or that he employed tactics such as "physical violence, fraud or misrepresentation, civil suits and criminal prosecutions." *NBT Bancorp Inc. v. Fleet/Norstar Fin. Grp., Inc.*, 87 N.Y.2d 614, 624 (1996). Accordingly, Plaintiff's claim is dismissed.

The Court has considered the remainder of the Defendant Hechtman's arguments and finds them without merit.

III. Conclusion

For the foregoing reasons, it is

ORDERED that Defendants 119 Spring Street Company, LLC, Esilda Buxbaum, Josephine Corbo Harris, Oliver Lewis Harris, Lynn Reiser-Hechtman, individually and as Executor of the Estate of Martin Hechtman, Edward E. O'Connell, Jill A. O'Connell's motion to dismiss is granted as to Counts One and Two of the Complaint, granted in part as to Count Three, and is otherwise denied; and it is

ORDERED that Defendant Dov Hechtman's motion to dismiss is granted as to Count Five of the Complaint, granted in part as to Count Four, and is otherwise denied; and it is

ORDERED that all Defendants are directed to serve an answer to the Complaint within 20 days after service of a copy of this order with notice of entry; and it is further

ORDERED that counsel are directed to appear for a preliminary conference in Room 442, 60 Centre Street, on June 3, 2014, at 10 AM.

Dated: New York, New York
April 28, 2014

ENTER:

Hon. Eileen Bransten, J.S.C.