

**Ryan v Liquid Holdings Group, LLC**

2014 NY Slip Op 31797(U)

July 3, 2014

Supreme Court, New York County

Docket Number: 156735/2013

Judge: Saliann Scarpulla

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SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF NEW YORK: COMMERCIAL DIVISION: PART 39

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THOMAS RYAN and JOHN LUGANO,

Plaintiff,

Index No: 156735/2013  
Submission Date: 3/15/14

-against-

**DECISION AND ORDER**

LIQUID HOLDINGS GROUP, LLC, LIQUID  
PRIME HOLDINGS LLC, and BRIAN FERDINAND

Defendants.

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**For Plaintiff:**

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**For Defendants:**

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Papers considered in review of the motion to dismiss:

Notice of Motion . . . . .	1
Aff in Support . . . . .	2
Memo of Law . . . . .	3
Aff in Opp . . . . .	4
Mem of Law . . . . .	5
Reply Aff . . . . .	6
Reply Memo of Law . . . . .	7

HON. SALIANN SCARPULLA, J.:

In this action to recover damages stemming from a start up venture, defendants Liquid Holdings Group LLC (“Holdings Group”), Liquid Prime Holdings LLC (“Prime Holdings”), and Brian Ferdinand (“Ferdinand”) (collectively, the “defendants” or “Liquid Holdings”) move to dismiss the action pursuant to: (1) CPLR 7501, on the ground that there is a mandatory arbitration provision; (2) CPLR 1003 and 3211(a)(10), on the ground that plaintiffs Thomas Ryan (“Ryan”) and John Lugano (“Lugano”) (collectively

“plaintiffs”) failed to join necessary parties and improperly joined other parties; (3) CPLR 3211(a)(7) for failure to state a cause of action; and (4) CPLR 3211(a)(5), on the grounds that the breach of contract cause of action is barred by the statute of frauds.

As alleged in the complaint, on or about September 9, 2011, plaintiffs began an email correspondence with Ferdinand “for a business proposal.”<sup>1</sup> Ferdinand is a principal/officer of Holdings Group, Prime Holdings, and non-party Liquid Trading International LLP (“Trading International”). Plaintiffs then met with Ferdinand and Ed Feigeles (“Feigeles”), a member of the board of directors of Liquid Holdings, at which time plaintiffs presented Ferdinand with a proposal to create an inter-dealer broker (“IDB”) to engage in fixed income, equities and commodities business (the “ID Business”).

Plaintiffs and Ferdinand held additional meetings, during which time the parties negotiated a potential arrangement to open the ID Business “within the rubric of Liquid Holdings.” The parties also engaged in regular email and telephone communication. During these talks, the plaintiffs allege, the parties made various representations and warranties to each other, and upon which the parties relied when they entered into an oral contract in or about October 2011 for the ID Business.

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<sup>1</sup> Unless otherwise indicated, all background facts are taken from the allegations of the complaint, and will be accepted as true only for the purposes of this motion to dismiss. *See Leon v. Martinez*, 84 N.Y.2d 83, 87 (1994) (“On a motion to dismiss pursuant to CPLR 3211, the pleading is to be afforded a liberal construction [and the court will] accept the facts alleged in the complaint as true, accord plaintiffs the benefit of every possible favorable inferences, and determine only whether the facts as alleged fit within any cognizable legal theory”) (citations omitted).

The complaint alleges that pursuant to this oral agreement, plaintiffs agreed to: create the infrastructure needed for Liquid Holdings to engage in the ID Business; open accounts for the ID Business; pay proportionate expenses for Liquid Holdings' compliance officer; pay proportionate expenses for Liquid Holdings' IT technician; pay rent to Liquid Holdings for office space; and share fifty percent (50%) of the profits of the ID Business with Liquid Holdings. It is further alleged that Liquid Holdings agreed to: provide the broker-dealer through which the ID Business could broker equities and fixed income business; provide the futures commodities merchant through which the ID Business could broker commodities business; fund all start up expenses, subject to repayment by the initial revenues of the ID Business; provide ten million dollars (\$10,000,000.00) in capital for the ID Business; provide the ID Business access to a compliance officer and an IT technician; provide adequate office space; comply with all regulatory requirements to which the ID Business was subject; and provide funding and capital to the ID Business for a minimum of two years.

Plaintiffs alleges that a broker-dealer was "elemental and critical to the operation of all non-commodities components of the ID Business," and that plaintiffs relied on Ferdinand's representation and promise of the existence of a broker-dealer when they entered into the oral agreement with Liquid Holdings.

As alleged in the complaint, Ryan left his employment and began building the ID Business in or around November 2011. Also in or around November 2011, Ferdinand informed plaintiffs that Liquid Holdings did not own, control or have an arrangement

with a broker-dealer through which the ID Business could broker equities and fixed income business. This, it is alleged, caused a significant delay and hardship for the commencement of the ID Business. However, based on Ferdinand's new representations that he was close to acquiring a broker-dealer, plaintiffs carried on with activities related to forming the ID Business. From November 2011 to February 2012, Liquid Holdings paid for all operating expenses of ID Business, as per the parties' oral agreement.

In or around February 2012, Lugano left his position at another company, and joined the ID Business without pay. Plaintiffs allege that in February 2012, Liquid Holdings acquired a broker-dealer, but it lacked the necessary approvals to engage in equities and fixed income business. Plaintiffs allege that this caused a five (5) month delay in the start of money making operations. Liquid Holdings also failed to provide ten million dollars in capital, providing only \$1.5 million in capital. The lack of capital forced the ID Business to forego brokering business which would have "had an enormous impact on the bottom line." Even still, plaintiffs continued to develop the ID Business.

Ferdinand offered to increase the capital available to the ID Business to \$3 million dollars, and to move the ID Business in to larger office space, if the ID Business agreed to purchase "Liquid View," a new software platform from Liquid Holdings. Plaintiffs accepted these terms, even though they did not need or want the software. Beginning in July 2012, the ID Business began to pay Liquid Holdings \$1,000.00 per month per terminal for the software, and all ID Business brokers signed contracts indicating that

they used the software. However, it is alleged, that as of July 2012, Liquid View was not able to perform the necessary tasks, and no ID Business brokers received it.

The software was eventually installed on one terminal in January 2013, but failed to work. And yet, it is further alleged, between July 2012 and May 2013, the ID Business paid Liquid Holdings approximately \$241,000.00 for the software. Additionally, the plaintiffs alleges that Liquid Holdings also failed to provide the increased capital.

Plaintiffs allege that despite the various delays caused by defendants, plaintiffs fulfilled their contractual obligations, including forming and operating the ID Business, reimbursing all expenses advanced by Liquid Holdings, and sharing 50% of the ID Business's profits with Liquid Holdings.

The ID Business grew throughout 2012, with 22 employees by the end of the year. However, plaintiffs "well understood" that without increased capital and larger office space, the ID Business could not continue to expand. In or around January 2013, plaintiffs approached Ferdinand to discuss their need for a larger office space, and to request the promised \$3 million additional capital. At this meeting, Ferdinand told plaintiffs that Liquid Holdings needed to unwind the ID Business by April 2013, because Liquid Holdings planned to go public in connection with its software technology platform, and their bankers wanted Liquid Holdings to go public solely as a technology company. Liquid Holdings agreed to extend the unwind date to June 2013, "giving [p]laintiffs more time to reorganize as a new entity." The plaintiffs allege that to restart the ID Business, they expended significant time, effort and costs.

On or about April 11, 2013, Liquid Holding Group filed an S-1 in connection with its Initial Public Offering (“IPO”). The S-1 Indicates that in March 2013, Liquid Holdings had twenty-four users of its software. Plaintiffs allege, on information and belief, that the twenty-four users referred to in the S-1 are the terminals used by the ID Business employees.

Plaintiffs allege that defendants failed to honor their two-year commitment to plaintiffs, and defendants are “instead keeping the relationships established by Ryan and Lugano and unjustly enriching themselves at their expense.”

In addition, plaintiffs allege that the dissolution of the ID Business has required plaintiffs to start new operations with a new broker dealer and an introducing broker. They must also re-open accounts, and are unable to do business with 25% of the accounts they previously opened or set up at Liquid Holdings.

In or about July 2013, plaintiffs commenced this action seeking to recover damages for fraudulent inducement, breach of contract, and unjust enrichment.

Defendants move to dismiss the complaint, arguing first that plaintiffs’ claims should be dismissed because the mandatory arbitration provision bars the claims from being heard by this Court. They argue that arbitration is mandated by virtue of Lugano’s Financial Industry Regulatory Authority (“FINRA”) application which contains an arbitration provision. In addition, defendants assert that pursuant to FINRA’s Code of Arbitration Procedure for Industry Disputes (“Industry Code”), plaintiffs are members or

associated persons of defendants' broker-dealer, which mandates this dispute be arbitrated.

Defendants also maintain that plaintiffs fail to name two (2) necessary parties, Liquid Prime Services, Inc. ("Prime Services") and Liquid Futures, LLC ("Liquid Futures"), the entities which held and operated the ID Business. Additionally, defendants Holdings Group and Prime Holding argue that they are not registered as broker-dealers and have nothing to do with the purported oral agreement with plaintiffs. Ferdinand also moves to dismiss on the grounds that plaintiffs lack a basis to hold him personally liable for representations he allegedly made while negotiating a contract with plaintiffs on behalf of the corporate defendants.

In addition, defendants assert that the complaint must be dismissed for failure to state a cause of action. As to the claim for fraudulent inducement, defendants assert that plaintiffs are sophisticated parties, who could not have relied on defendants' representations without conducting and reviewing available due diligence. Defendants also argue that any representations about future performance allegedly used to induce plaintiffs to maintain the ID Business and enter into another oral agreement to purchase software from an entity related to the corporate defendants is duplicative of the breach of contract claims.

Defendants also argue that the breach of contract claim is barred by the statute of frauds, as it is an oral contract which could not have been performed within one year. They also assert that plaintiffs failed to identify the specific provision of the contract

which defendants allegedly breached. Defendants further argue that plaintiffs failed to clearly name to parties to the agreement, and that vague characterizations are insufficient to state a cause of action for breach of contract.

Lastly, defendants argue that plaintiffs' unjust enrichment claim is duplicative of their breach of contract claims, and therefore should be dismissed.

### **Discussion**

Defendants first move pursuant to CPLR 7501 to dismiss the complaint because of the existence of a mandatory arbitration agreement in the Lugano's FINRA Uniform Application and in the Industry Code. Even accepting defendants' assertion that there exists a binding arbitration agreement, this is not a valid basis for dismissing the complaint. "[T]he existence of an arbitration agreement would not entitle the defendant to dismissal of this action but merely to a stay thereof." *Weiss v. Kozupsky*, 237 A.D.2d 514, 515 (2d Dep't 1997). *See also Allied Building Inspectors International Union of Operating Engineers, Local Union No. 211, AFL-CIO v. Office of Labor Relations of the City of New York*, 45 N.Y.2d 735, 738 (1978) ("[a]n agreement to arbitrate is not a defense to an action. Thus, it may not be the basis for a motion to dismiss") (citations omitted); *Ogoe v. New York Hosp.*, 99 A.D.2d 968 (1<sup>st</sup> Dept 1984) ("The mere existence of an arbitration clause in the contract would not authorize dismissal of the action").

At oral argument before the Court on March 3, 2014, counsel for defendants stated that defendants have not moved to compel arbitration.<sup>2</sup> Accordingly, even if I find that there is a binding arbitration agreement, the proper remedy will not be dismissal, but rather a stay of this proceeding. *Allied Building Inspectors*, 45 N.Y.2d at 738 (“The [defendant], for some reason, did not move to compel arbitration. Instead, it moved for dismissal and for such other relief as the court deems just and proper. Since, as noted, a dismissal is improper, the appropriate remedy is a stay of the judicial proceeding”).

In any event, defendants fail to establish the existence of a binding arbitration agreement. Defendants claim the mandate to arbitrate stems from (1) Lugano’s Uniform Application, which states “I agree to arbitrate any dispute, claim or controversy that may arise between me and my firm, or a customer, or another other person, that is required by to be arbitrated under the rule, constitutions, or by-laws of the SROs indicated in Section 4;” and (2) the fact that the broker-dealer is a FINRA member, as defined in the Industry Code, and therefore is bound by the Code’s arbitration provision.

Lugano’s Uniform Application is insufficient to compel arbitration here. First, defendants admitted at oral argument before the Court on March 5, 2014, that as alleged in the complaint, the parties entered into the oral agreement *before* Lugano signed the Uniform Application. Defendants maintain that even though the oral agreement pre-dates

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<sup>2</sup> Defendants’ notice of motion states that they are moving for an order “[p]ursuant to CPLR 7501, dismissing plaintiffs’ [c]omplaint on the ground that mandatory arbitration provisions make this Court the improper forum to her plaintiffs’ claims.” However, at oral argument before the Court on March 3, 2014, counsel for defendant stated that defendants “have moved to stay this litigation.”

the Uniform Application, the fact that the dispute arose after Lugano executed the Uniform Application somehow triggers the FINRA arbitration provision. This contention is without merit. Because Lugano completed the Uniform Application after the parties entered the purported oral agreement defendants have failed to establish that the parties intended to be bound to arbitrate at the time they entered into the oral agreement. The “Court will not insinuate an agreement to arbitrate where none was contemplated at the time the subject oral contract was made. . . . [S]ubsequent submission of the respective parties to rules promulgated by the NASD is not referable to a mutual intention to submit a pre-existing contract dispute to the arbitration before that Association.” *Harriman Group v. Napolitano*, 213 A.D.2d 159, 163-164 (1st Dep’t 1995) (internal citations omitted).

Defendants also assert that “the Court should uphold the mandatory arbitration provision contained in FINRA’s Industry Code.” Defendants’ claim that this arbitration provision governs because plaintiffs subscribed to the Industry Code as members and associated persons of the non-party dealer-broker, and that by becoming members of such, they are deemed to have agreed to be bound by FINRA’s arbitration provision.

FINRA Industry Code, Rule 13200, provides “Except as otherwise provided in the Code, a dispute must be arbitrated under the Code if the dispute arises out of the business activities of a member or an associated person and is between or among: Members; Members and Associated Persons; or Associated Persons.” Rule 13100 (o) of the FINRA Code defines “Members” as “any broker or dealer admitted to membership in

FINRA, whether or not the membership has been terminated or cancelled; and any broker or dealer admitted to membership in a self-regulatory organization that, with FINRA consent, has required its members to arbitrate pursuant to the Code and/or to be treated as members of FINRA for purposes of the Code, whether or not the membership has been terminated or cancelled.”

Rule 13100(a) of the Industry Code states “[t]he term ‘associated person’ or ‘associated person of a member’ means a person associated with a member, as that term is defined in paragraph (r).” Rule 11200(r) provides that

The term “person associated with a member” means:

(1) A natural person who is registered or has applied for registration under the Rules of FINRA; or

(2) A sole proprietor, partner, officer, director, or branch manager of a member, or other natural person occupying a similar status or performing similar functions, or a natural person engaged in the investment banking or securities business who is directly or indirectly controlling or controlled by a member, whether or not any such person is registered or exempt from registration with FINRA under the By-Laws or the Rules of FINRA.

For purposes of the Code, a person formerly associated with a member is a person associated with a member.

Defendants maintain that Lugano, as a registered broker is an “associated person,” which mandates that his claims should be subject to arbitration pursuant to Rule 13100(r)(1). Defendants also argue that because plaintiffs allege that Ryan was a party to the alleged oral agreement governing the ID Business, he is an associated person pursuant to Rule 13100(r)(2).

Even were I to find that Lugano and Ryan were bound to arbitrate pursuant to the FINRA Code, defendants admit that they are not FINRA members. Therefore, under the plain language of FINRA Rule 13200, this dispute is not “between or among” FINRA members, and arbitration is therefore not required. *See Alliancebernstein L.P. v. Gelwarg*, 2012 NY Slip Op 33279(U), 2012 N.Y. Misc. LEXIS 6248, 11-12 (Sup. Ct. N.Y. Co. April 23, 2012) (court will not compel arbitration on the grounds that an affiliate of non-member plaintiff is a member of FINRA) (citing *AllianceBernstein L.P. v. Bustos*, Sup. Ct. New York Co., Index No. 650999/11 (May 27, 2011) (where plaintiff is not a member of FINRA, although it has a FINRA-registered affiliate company, arbitration should not be compelled)).

Defendants assert that while they are not FINRA members, their broker-dealers Prime Services and Liquid Futures, the entities which held and operated the ID Business, are both FINRA members, and that plaintiffs intentionally failed to name them as parties to avoid compulsory arbitration. Defendants assert that the complaint alleges that plaintiffs’ claims stem from a “contact and dealings with” the ID Business, which makes Prime Services and Liquid Futures necessary parties.

However, considering only at the allegations of the complaint, as I must on a motion to dismiss, it is clear that the plaintiffs allege that they entered into an agreement with defendants – not with the broker-dealers or the ID Business. As alleged in the complaint, the ID Business was created by the parties’ agreement, and the broker-dealer was an element of the transaction, but neither are alleged to have made representations to

plaintiffs, or to have entered into agreements with the plaintiffs. The mere fact that defendants are related to these FINRA members is not enough to necessitate a stay for arbitration, as there is nothing to suggest the defendants agreed to arbitrate.

*Alliancebernstein L.P.*, 2012 NY Slip Op 33279(U); *TNS Holdings Inc. v. MKI Sec. Corp.*, 92 N.Y.2d 335, 340 (1998) (“interrelatedness, standing alone, is not enough to subject a nonsignatory to arbitration”).

Nor have defendants established that Prime Services and Liquid Futures are necessary parties to this action. CPLR 1001(a) provides that a person or entity ought to be joined as a party if such person or entity might be inequitable affected by a judgment in the action. *L-3 Communications Corp. v. Safenet, Inc.*, 45 A.D.3d 1, 10 (1<sup>st</sup> Dep’t 2007) (internal quotations and citation omitted). As there are no allegations in the complaint that Prime Services and Liquid Futures were parties to the oral agreement, nor have defendants submitted any evidence to support their assertions that these entities are necessary parties, I find that Prime Services and Liquid Futures are not necessary parties to this action.<sup>3</sup> Similarly, defendants fail to establish that Liquid Holdings was improperly named as defendant. The allegations of the complaint are that Liquid Holdings entered into the oral agreement with plaintiffs. Defendants have submitted nothing other than allegations contained in their memorandum of law to establish that

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<sup>3</sup>Additionally, even had the defendants established that Prime Services and Liquid Futures were necessary parties, it would “not mandate dismissal of the action.” *L-3 Communications Corp. v. Safenet, Inc.*, 45 A.D.3d 1, 10 (1<sup>st</sup> Dep’t 2007). “[D]ismissal for failure to join a necessary party should eventuate only as a last resort.” *Id.*, at 11 (internal quotation omitted).

Prime Services and Liquid Futures should be named as defendants, and that Liquid Holdings should not.

Defendants also move to dismiss all causes of action for failure to state a claim. It is well settled that where a cause of action for fraudulent inducement is duplicative of a claim for breach of contract it must be dismissed. *See Community Counseling & Mediation Servs. v Chera*, 115 A.D.3d 589, 591 (1<sup>st</sup> Dep't 2014) (“The proposed claim for fraudulent inducement, based merely on a misrepresented intent to perform, is duplicative of the breach of contract claim”) (internal quotation and citations omitted). “In a fraudulent inducement claim, the alleged misrepresentation should be one of then-present fact, which would be extraneous to the contract and involve a duty separate from or in addition to that imposed by the contract, and not merely a misrepresented intent to perform.” *Hawthorne Group, LLC v. RRE Ventures*, 7 A.D.3d 320, 323-324 (1<sup>st</sup> Dep't 2004) (citations omitted).

Here, plaintiffs make no allegations of a separate duty owed them by defendants, or of any misrepresentations separate for the promises under the agreement. In fact, a comparison of the alleged misrepresentations to the alleged terms of the agreement shows they are practically identical. Accordingly, the cause of action for fraudulent inducement is dismissed.

This failure by plaintiffs to allege a separate duty also necessitates dismissal of the cause of action for unjust enrichment. “It is well settled that a claim for unjust

enrichment does not lie where it duplicates or replaces a conventional contract claim.”

*Scarola Ellis LLP v. Padeh*, 116 A.D.3d 609, 611 (1<sup>st</sup> Dep’t 2014) (citation omitted).

Where, as here, the action at issue stems from an alleged breach of an oral agreement. “claims for . . . unjust enrichment and fraud are precluded by the fact that a simple breach of contract claim may not be considered a tort unless a legal duty independent of the contract – *i.e.*, one arising out of circumstances extraneous to, and not constituting elements of, the contract itself – has been violated. The requirement of a writing may not be circumvented by recasting the action as one seeking damages in tort.” *Brown v. Brown*, 12 A.D.3d 176, 176-177 (1st Dep’t 2004) (citations omitted). *See also Rogowsky v. McGarry*, 55 A.D.3d 815, 816-817 (2d Dep’t 2008) (“The causes of action sounding in fraud and unjust enrichment were properly dismissed pursuant to CPLR 3211 (a) (7), as the underlying basis for these claims was the alleged breach of the oral agreement. Since the plaintiffs failed to allege that the defendant violated a legal duty independent of the purported oral agreement, they are unable to assert a viable cause of action sounding in fraud or unjust enrichment.”) Accordingly, the cause of action for unjust enrichment is dismissed.

Defendants also move to dismiss the breach of contract claim arguing that the alleged oral agreement between the parties is void pursuant to the Statute of Frauds. Gen. Oblig. L. §5-701. The Statute of Frauds is generally “inapplicable to an agreement to create a joint venture or partnership because an oral agreement for an indefinite period creates a partnership or joint venture at will.” *Moses v Savedoff*, 96 A.D.3d 466, 469 (1st

Dep't 2012) (citations omitted). *See also Mendelovitz v. Cohen*, 66 A.D.3d 849, 850 (2d Dep't 2009). "This is because, absent any definite term of duration, an oral agreement to form a partnership or joint venture for an indefinite period creates a partnership or joint venture at will." *Foster v. Kovner*, 44 A.D.3d 23, 27 (1<sup>st</sup> Dep't 2007). As a "joint venture is subject to the same rules as a partnership," *Hooker Chemicals & Plastics Corp. v. International Minerals & Chemical Corp.*, 90 A.D.2d 991 (4th Dep't 1982), a joint venture at will may be "may be dissolved, without liability for breach of contract, on a moment's notice." *Shandell v. Katz*, 95 A.D.2d 742, 743 (1<sup>st</sup> Dep't 1983). Accordingly, if the parties had entered into an oral agreement for a joint venture at will, there could be no cause of action for a breach of contract.

While plaintiffs claims that the oral agreement created a joint venture at will, they also allege that an aspect of the oral agreement was that the defendants would fund the ID Business for at least two (2) years. Therefore, as alleged by plaintiffs, the purported oral agreement, was by its terms for a period of at least two (2) years. An oral agreement that cannot be completed, by its terms, within one year, is barred by the Statute of Frauds. Gen. Oblig. L. §5-701(a); *Kocourek v. Booz Allen Hamilton Inc.*, 71 A.D.3d 511, 512 (1<sup>st</sup> Dep't 2010) (where oral agreement "is one which by its very terms has no possibility of being performed within one year . . . the absence of a writing violates the statute of frauds, rendering the alleged oral promise . . . unenforceable") (internal citation omitted).

Accordingly, “if the purported joint venture had a definite term of at least two years . . . and was enforceable as such, the Statute of Frauds would void such agreement in the absence of a writing; if the term was indefinite and the agreement was not void under the Statute of Frauds . . . defendants terminated it as of right . . . and cannot be held liable to plaintiff[s] in damages for breach of contract. In either event, judgment must be given to the defendants.” *Mendelovitz v. Cohen*, 28 Misc. 3d 1217(A) (Sup Ct. Kings Co. 2010) (citations omitted).<sup>4</sup> The cause of action for breach of contract is dismissed.

In accordance with the foregoing, it is hereby

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<sup>4</sup> Plaintiffs’ argument that the partial performance of the oral agreement saves it from being void under the Statute of Frauds is also unavailing. *See Gural v. Drasner*, 114 A.D.3d 25 (1<sup>st</sup> Dep’t 2013) (the exception to the statute of frauds for part performance applies only to Gen. Oblig. L. §5-703, which deals with real estate transactions, and is not extended to Gen. Oblig. L. §5-701).

In addition, plaintiffs fail to plead a breach of contract cause of action against Ferdinand. There is nothing plead in the complaint to suggest that Ferdinand purported to bind himself individually to the alleged oral agreement. *Shugrue v. Stahl*, 985 N.Y.S.2d 547 (1<sup>st</sup> Dep’t 2014); *Chestnut Hill Partners, LLC v. Van Raalte*, 45 A.D.3d 434, 435 (1<sup>st</sup> Dep’t 2007) (appropriate to dismiss the complaint against the individual defendants, where “plaintiff failed to allege facts implying individual abuse of the privilege of doing business in the corporate form resulting in harm”); *Harry Kolomick Contractors v. Shelter Rock Estates*, 172 A.D.2d 492 (2d Dep’t 1991).

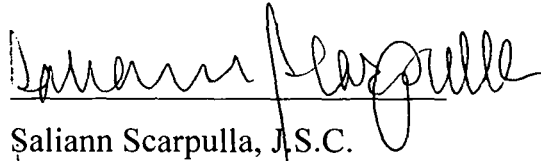
ORDERED that the motion by defendants Liquid Holdings Group LLC, Liquid Prime Holdings LLC, and Brian Ferdinand to dismiss the complaint is granted and this action is dismissed in its entirety; and it is further

ORDERED that the Clerk is directed to enter judgment in favor of defendants dismissing this action.

This constitutes the decision and order of this Court

Dated: New York, New York  
July 3 , 2014

ENTER:

  
Saliann Scarpulla, J.S.C.