SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK : IAS PART 12

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ROBINSON BROG LEINWALD GREEN GENOVESE & GLUCK, P.C.,

Plaintiff,

-against-

VAAD L'HAFOTZAS SICHOS, INC., ZALMAN CHANIN, SECOND SOURCE FUNDING LLC a/k/a 2D SOURCE FUNDING, and SAM CHANIN,

Defendants.

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Index No. 159138/14

Mot. seq. no. 003

DECISION AND ORDER

BARBARA JAFFE, JSC:

For plaintiff:
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By notice of motion, defendants move pursuant to CPLR 3211(a)(1) and (7) for an order dismissing the amended complaint as against defendants Vaad L'Hafotzas Sichos, Inc., Zalman Chanin, and Sam Chanin, and dismissing the second, third, and fourth causes of action of the amended complaint as against defendant Second Source Funding LLC. Plaintiff opposes.

I. PERTINENT FACTS

This action arises from plaintiff's representation of Vaad, an editor and publisher of rabbinical lectures, in a federal trademark proceeding and other related matters. Defendant Zalman Chanin is Vaad's founder and principal. Sam Chanin, Zalman's son, is Second Source's principal. (NYSCEF 41).

On or about September 5, 2007, plaintiff's predecessor, Levy & Boonshoft, P.C.,

executed a written letter of engagement, stating, as pertinent here:

> 1. *Professional Undertaking.* Based on our two meetings with you . . ., we believe that [Vaad] may have significant claims against [the trademark defendants]. . . . We have only begun to analyze the underlying facts and historical underpinnings which may be critical to establishing Vaad's legal rights . . . .
> . . . .
>
> 7. *Financial obligation.* It is expressly understood that Sam Chanin will be funding our engagement and any fees or costs incurred in connection therewith. For purposes of attorney-client interaction, it is further understood that our firm is authorized to communicate directly with Sam Chanin as if he were a client of our firm. This authority is subject to further written instructions from an authorized representative of Vaad.

(NYSCEF 68).

The engagement letter is addressed to Zalman and Sam at the offices of Vaad and Second Source, respectively, and is signed by David M. Levy, a partner of plaintiff, on behalf of plaintiff's predecessor. Zalman signed for Vaad and Sam signed for Second Source. (*Id.*).

Between November 2007 and October 2008, plaintiff sent Vaad and Zalman 13 invoices for legal fees and disbursements for services rendered, which were paid in full. (NYSCEF 71). Between December 2008 and October 2010, plaintiff sent Vaad and Zalman 18 invoices for services rendered, only one of which was partially paid. (NYSCEF 72).

During the same period, Levy sent Sam numerous emails asking about the status of and/or demanding outstanding payments owed under their agreement. By letter dated October 14, 2010, Levy advised Sam that due to his pattern of delinquency, plaintiff would give him a final chance to pay the outstanding balance before commencing legal action, and attached thereto a current statement of account. (NYSCEF 69).

II. PROCEDURAL HISTORY

On or about September 17, 2014, plaintiff commenced this action based on Vaad's and

Zalman's failure to pay $156,102.41 in legal fees and expenses, advancing causes of action in breach of contract, an account stated, quantum meruit, and unjust enrichment. Annexed to the complaint is a statement of account reflecting the balance owed as of July 30, 2014. (NYSCEF 1). On or about December 8, 2014, Vaad and Zalman interposed an answer and counterclaims. (NYSCEF 34).

On or about December 22, 2014, plaintiff filed an amended complaint adding Sam and Second Source as defendants. (NYSCEF 41). The amended complaint was efiled and served on Vaad and Zalman the same day, on Second Source through the Secretary of State on January 8, 2015, and on Sam pursuant to CPLR 308(4) on January 11, 2015. (NYSCEF 52-53).

By notice of motion dated January 12, 2015, defendants moved for an order dismissing the amended complaint for failure to state cause of action and based on certain documentary evidence. (NYSCEF 42). On February 12, 2015, they withdrew the motion and filed the instant motion.

III. PROCEDURAL ISSUES

A. Contentions

Plaintiff asserts that defendants waived their right to file the instant motion when they withdrew the January motion without indicating it was withdrawn without prejudice. In any event, it claims that defendants' time to serve an answer, save for Sam, had expired by the time they withdrew the motion and re-filed, as did their time to move to dismiss. Moreover, absent any effort to seek its consent or leave of court to file the second motion, plaintiff maintains that defendants should not be permitted to proceed. (NYSCEF 85).

In opposition, defendants deny that their first motion to dismiss was untimely as it was

never submitted to or decided by the court, and thus was not decided on the merits. They also assert that plaintiff is not prejudiced by the alleged late filing as no new legal theories are raised in the second motion, no delay ensued, and plaintiff has the advantage of obtaining additional time to formulate its opposition. In any event, they argue that the court should overlook the alleged defect, as they allege that they withdrew the motion and filed the instant motion based on their receipt from plaintiff of the letter agreement. (NYSCEF 90-91).

B. Analysis

1. Successive motions

Pursuant to CPLR 3211(e), "[a]t any time before service of the responsive pleading is required, a party may move on one or more of the grounds set forth in [CPLR 3211(a)], and no more than one such motion shall be permitted," but "[a] motion based upon a ground specified in [CPLR 3211(a)(2), (7), and (10)] may be made at any subsequent time or in a later pleading." A party does not violate the prohibition against successive motions to dismiss if the earlier motion was not decided on the merits. (*Rivera v Bd. of Educ. of City of New York*, 82 AD3d 614, 615 [1st Dept 2013]).

As defendants' first motion was withdrawn before it could be decided on the merits, much less opposed by plaintiff, the instant motion is not precluded. (*See Rivera*, 82 AD3d at 615 [original motion denied as premature and thus not decided on merits]; *Fishberg v Januszewski*, 43 Misc 3d 137[A], 2014 NY Slip Op 50696[U], *1 [App Term, 1st Dept 2014] [no violation of single-motion rule, where defendants' prior dismissal motions not decided on merits]; *cf. Barbarito v Zahavi*, 107 AD3d 416, 420 [1st Dept 2013] [as amended complaint set forth new cause of action, defendants had not addressed merits of new claim in original motion to

dismiss]). Moreover, plaintiff cites no authority, nor has research disclosed any authority for the proposition that by failing to specify that defendants' original motion is withdrawn without prejudice or absent plaintiff's consent and/or court leave, the right to bring a second motion is waived.

2. Timeliness of motion

Pursuant to CPLR 2004, the court may extend the time limit "fixed by any statute, rule or order for doing any act, upon such terms as may be just and upon good cause shown," and may consider facts such as the length of the delay, prejudice to the opposing party, the reasons given for the delay, and whether the party seeking the extension was already in default. (*Tewari v Tsoutsouras*, 75 NY2d 1, 11-12 [1989]; *Grant v City of New York*, 17 AD3d 215, 217 [1st Dept 2005]).

The time limits set forth in CPLR 3211(e) are inapplicable to the branch of defendants' motion seeking relief pursuant to CPLR 3211(a)(7). Thus, defendants may challenge the sufficiency of plaintiff's pleadings at any time. (*See Hendrickson v Philibor Motors, Inc.*, 102 AD3d 251, 257 [2d Dept 2012] [motion pursuant to CPLR 3211(a)(7) filed after time limit for serving responsive pleading expired was appropriate]).

While defendants do not formally move for an extension pursuant to CPLR 2004, they articulate a basis for it in their moving papers by seeking to excuse the untimeliness of their second motion. (*Cf. Khan v Hernandez*, 122 AD3d 802, 803 [2d Dept 2014] [court excused late filing of proof of service *sua sponte*]). Here, given the minimal delay in filing it, the substantial similarity between the two motions, the vagueness of plaintiff's claim of prejudice, and defendants' recent receipt of the underlying agreement, a retroactive extension of time to file is

warranted. (*See Harley v United Servs. Auto Assn.*, 191 AD2d 768, 768-769 [3d Dept 1993], *appeal dismissed* 82 NY2d 701 [extension warranted for untimely motion to dismiss where delay was short, existence of meritorious defense, no prejudice to plaintiff, and plaintiff's failure to move for default]). In any event, I may still consider the documentary submissions in reviewing the motion pursuant to CPLR 3211(a)(7). (*See eg, Basis Yield Alpha Fund (Master) v Goldman Sachs Group, Inc.*, 115 AD3d 128, 133-135 [1st Dept 2014] [court considered documentary evidence, here, disclaimers and disclosures in offering circulars, on motion pursuant to CPLR 3211(a)(7)]).

IV. SUBSTANTIVE ISSUES

A. Contentions

In support of their motion, defendants argue that the engagement letter is dispositive in demonstrating that Vaad, Zalman, and Sam undertook no financial obligation to plaintiff. Rather, the reference to Sam in the financial obligation provision establishes that Second Source is the sole obligor, evidenced by Sam's execution of the letter in his corporate capacity alone. To the extent the financial obligation provision is ambiguous, they contend, it should be construed against plaintiff as drafter. They also maintain that plaintiff's remaining causes of action are barred as duplicative of its breach of contract claim or, alternatively, that the account stated claim is precluded as against Vaad, Zalman, and Sam, absent an underlying contractual obligation, and as against Second Source, absent any invoices. Moreover, they allege that plaintiff's claims for unjust enrichment and quantum meruit fail as against Zalman, Sam, and Second Source as plaintiff performed services for Vaad alone, notwithstanding any benefit they received. (*Id.*).

In opposition, plaintiff alleges that Sam's agreement to fund the representation guarantees

Vaad's and Zalman's obligations to pay, that the parties understood that Sam, Vaad, and Zalman would be jointly and severally liable, and that an interpretation of the letter as binding Second Source alone fails to give meaning to the other provision binding Sam personally, and claims that there is "direct and explicit evidence" of Sam's intent to be bound. (NYSCEF 85).

By respective affidavits dated April 13, 2015, David M. Levy and Ronald B. Goodman, plaintiff's former partner and custodian of billing records, respectively, reiterate the circumstances of plaintiff's engagement and attest that the firm sent all defendants monthly invoices which were retained without objection, that defendants partially paid some of them, that many were paid by Sam's other nonparty business entities, and that Sam acknowledged his payment obligation. (NYSCEF 67).

Plaintiff argues that the engagement letter does not preclude its other claims, as courts have simultaneously granted summary judgment on contract and quasi-contract claims, and that its claims of unjust enrichment and quantum meruit are likewise viable, as it provided services for Vaad and Zalman at the direction and for the benefit of all defendants. It alleges that in providing services, it relied on Sam's and Second Source's agreement to fund the representation when it agreed to provide Vaad and Zalman with its services in the trademark proceeding. (NYSCEF 85).

In reply, defendants contend that plaintiff relies on inadmissable parol evidence of the parties' contract negotiations which are, in any event, reduced to the letter itself, and otherwise reiterate the rest of their arguments. (NYSCEF 91).

B. Analysis

1. Applicable law

Pursuant to CPLR 3211(a)(7), a party may move at any time for an order dismissing a cause of action asserted against it on the ground that the pleading fails to state a cause of action. In deciding the motion, the court must liberally construe the pleading, accept the alleged facts as true, and accord the non-moving party the benefit of every possible favorable inference. (*Nonnon v City of New York*, 9 NY3d 825 [2007]; *Leon v Martinez*, 84 NY2d 83, 87 [1994]). The court need only determine whether the alleged facts fit within any cognizable legal theory. (*Mill Fin., LLC v Gillett*, 122 AD3d 98, 103 [1st Dept 2013]).

A party may also move for an order dismissing a pleading on the ground that it has a defense based on documentary evidence. (CPLR 3211[a][1]). The motion may be granted where factual allegations in the complaint are flatly contradicted by documentary evidence (*Kaisman v Hernandez*, 61 AD3d 565 [1st Dept 2009]; *Kliebert v McKoan*, 228 AD2d 232 [1st Dept 1996], *lv denied* 89 NY2d 802), and where the plaintiff alleges a breach of contract, the [i]nterpretation of an unambiguous contract is a question of law for the court, and the provisions of the contract setting forth the rights of the parties would prevail over the allegations asserted in the complaint" (*Provident Loan Soc. of New York v 190 E. 72nd St. Corp.*, 78 AD3d 501, 502 [1st Dept 2010]).

2. Breach of contract (first cause of action)

The elements of a cause of action for breach of contract are: 1) the existence of a contract between the plaintiff and the defendant, 2) the plaintiff's performance thereunder, 3) the defendant's breach of the contract, and 4) damages. (*US Bank Natl. Assn. v Lieberman,* 98 AD3d 422, 423 [1st Dept 2012]). The plaintiff's allegations must also reference the provision or

provisions of the contract allegedly breached. (*Canzona v Atanasio*, 118 AD3d 837, 839 [2d Dept 2014]).

It is well settled that a clear and complete written agreement "must be enforced according to the plain meaning of its terms." (*Greenfield v Philles Records, Inc.*, 98 NY2d 562, 569 [2002]). When parties dispute the meaning of contract provision, the court must determine in the first instance whether the clause is ambiguous when "read in the context of the entire agreement." (*W.W.W. Assoc., Inc. v Giancontieri*, 77 NY2d 157, 163 [1990]; *Richard Feiner & Co. v Paramount Pictures Corp.*, 95 AD3d 232, 237-238 [1st Dept 2012], *lv denied* 19 NY3d 814). A court may not "by construction add or excise terms, nor distort the meaning of those used and thereby make a new contract for the parties in the guise of interpreting the writing." (*Reiss v Fin. Performance Corp.*, 97 NY2d 195, 199 [2001] [internal quotation marks omitted]; *Jade Realty LLC v Citigroup Commercial Mtge. Trust 2005-EMG*, 83 AD3d 567, 568 [1st Dept 2011]). While an equivocal retainer agreement will ordinarily be construed against the attorney-drafter (*Albunio v City of New York*, 23 NY3d 65, 71 [2014]), in the context of a pre-discovery motion pursuant to CPLR 3211(a)(7) and an ambiguous contract that "cannot be construed as a matter of law," dismissal is inappropriate (*Telerep, LLC v U.S. Intl. Media, LLC*, 74 AD3d 401, 402 [1st Dept 2010]).

a. Sam

"A corporate officer who executes a contract acting as an agent for a disclosed principal is not liable for a breach of the contract unless it clearly appears that he or she intended to bind himself or herself personally"; there must be "clear and explicit evidence of the agent's intention." (*GMS Batching, Inc. v TADCO Constr. Corp.*, 120 AD3d 549, 552 [2d Dept 2014];

Nat. Union Fire Ins. Co. of Pittsburgh, PA v Chukchansi Economic Dev. Auth., 104 AD3d 467, 468 [1st Dept 2013]).

Clear and specific evidence of the agent's intent may be revealed where the agent signs an agreement in her personal capacity and again on behalf of her principal. (*Salzman Sign Co. v Beck*, 10 NY2d 63, 67 [1961]). However, the signatures must be considered with the rest of the agreement. (*Wormser, Kiely, Galef & Jacobs, LLP v Frumkin*, 125 AD3d 516, 517 [1st Dept 2015]; *see also PNC Capital Recovery v Mechanical Parking Sys., Inc.*, 726 AD2d 268, 270-271 [1st Dept 2001], *lv dismissed* 96 NY2d 937).

Here, although the engagement letter specifically provides that Sam undertakes financial responsibility for the fees, he neither initialed the provision nor did he sign the letter in his personal capacity. (*See PNC Capital Recovery*, 726 AD2d at 270-271 [that defendant signed promissory note and security agreement purportedly on behalf of corporation only did not resolve issue of personal liability]). Moreover, there is no other indication that he undertook that obligation personally, and there is no express mention of a personal guarantee.

Under these circumstance, each party's interpretation of the engagement letter is reasonable and, absent clear and specific evidence of Sam's intent to be bound, the agreement is ambiguous as to whether he is personally liable for plaintiff's fees. (*See Red-Kap Sales, Inc. v N. Lights Energy Prods., Inc.*, 94 AD3d 1281, 1282 [3d Dept 2012] [defendant signed agreement in purported corporate capacity, and guarantee provision did not indicate defendant "personally" guaranteed agreement, thus rendering agreement ambiguous]; *Stuyvesant Plaza, Inc. v Emizack LLC*, 307 AD2d 640, 640-641 [3d Dept 2003] [defendant signed guarantee using corporate title, and guarantee referred only to "the undersigned" without identifying defendant personally, thus

rendering guarantee provision ambiguous]; *see also First Capital Asset Mgt., Inc. v N. Am. Consortium, Inc.*, 286 AD2d 263, 264 [1st Dept 2001] [stock purchase agreement referred to both corporations and their individual agent as buyers and thus created ambiguity as to whether agent was personally bound]).

Consequently, dismissal pursuant to CPLR 3211(a)(7) is inappropriate. (*See Telerep, LLC*, 74 AD3d at 403 [as contract ambiguous, pre-answer motion to dismiss denied where "full factual record as to the parties' intent" had not been developed]; *119 Spring LLC v 119 Spring St. Co., LLC*, 2014 NY Slip Op 31134[U], *6 [Sup Ct, NY County 2014] [conflicting terms in contract resulted in ambiguity, precluding dismissal pursuant to CPLR 3211(a)(7)]). While plaintiff mentions that clear and specific evidence of Sam's intent exists, it fails to identify it. Defendants' motion based on documentary evidence also fails as they rely on an ambiguous contract. (*See Weston v Cornell Univ.*, 56 AD3d 1074, 1076 [3d Dept 2008] [ambiguous documentary evidence did not resolve all factual issues of plaintiff's breach of contract claim; dismissal pursuant to CPLR 3211(a)(1) denied]).

b. Vaad and Zalman

While Zalman signed the agreement on behalf of Vaad, and the agreement references Vaad and defines plaintiff's undertaking in terms of services it will provide to Vaad, nothing in the agreement obligates Vaad and/or Zalman to pay for plaintiff's services. Adopting plaintiff's argument that Vaad's and Zalman's obligations are primary and guaranteed by Sam, and that Sam, Vadd, and Zalman are jointly and severally liable, requires that a primary obligation be implied. (*See Kasowitz, Benson, Torres & Friedman, LLP v Reade*, 98 AD3d 403, 406 [1st Dept 2012] [agreement's silence on plaintiff's entitlement to certain contingency fees did not result in

ambiguity, and, if plaintiff wanted to include these terms, it "should have explicitly written such in its contingency fee"], *quoting* 33 Misc 3d 1209[A], 2011 NY Slip Op 51821[U], *8 [Sup Ct, NY County 2011]; *see also Sarmiento v Klar Realty Corp.*, 35 AD3d 834, 836-837 [2d Dept 2006] [insurance policy was clear and unambiguous that only accidents in New Jersey were covered, notwithstanding insurer's representative's claim that accident in New York would be covered]). As the agreement is unambiguous in establishing that they have no obligation, it conclusively disposes of plaintiff's breach of contract claim against them.

3. Account stated (second cause of action)

A claim for an account stated "assumes the existence of some indebtedness between the parties, or an express agreement to treat a statement of debt as an account stated." (*Shelly v Skief*, 73 AD3d 1016, 101 [2d Dept 2010]; *Ryan Graphics, Inc. v Bailin*, 39 AD3d 249, 250-251 [1st Dept 2007]). An account stated does not "create liability where none exists." (*Gurney, Becker & Bourne, Inc. v Benderson Dev. Co., Inc.*, 47 NY2d 995, 996 [1979]; *DerOhannesian v City of Albany*, 110 AD3d 1288, 1291 [3d Dept 2013], *lv denied* 22 NY3d 862 [2014]). Thus, a party may maintain an action for an account stated upon submission of the underlying contract, the unpaid invoices, and evidence that the defendant received and retained the invoices without objection. (*Salamone v Cohen*, 129 AD3d 877, 879 [2d Dept 2015]).

a. Vaad and Zalman

As the letter agreement obligates neither Vaad nor Zalman to pay for plaintiff's services (*supra*, IV.B.2.b.), there is no basis on which to hold them liable on the alleged account, notwithstanding the numerous invoices received and paid by to Vaad and Zalman without objection. (*See Ross v Sherman*, 57 AD3d 758, 759 [2d Dept 2008] [summary dismissal of

account stated claim granted where defendant established that it had no agreement with defendant]; *Simplex Grinnell v Ultimate Realty, LLC*, 38 AD3d 600, 600-601 [2d Dept 2007] [same]; *cf. Sabre Intl. Sec., Ltd. v Vulcan Capital Mgt., Inc.*, 95 AD3d 434, 438 [1st Dept 2012] [fact issues as to existence of oral agreement precluded summary judgment on claim for account stated, notwithstanding that plaintiff had sent several invoices to defendants]).

Thus, plaintiff fails to state a cause of action for an account stated against Vaad and Zalman. (*Cf. J.M. Bldrs. & Assoc., Inc. v Lindner*, 67 AD3d 738, 741 [2d Dept 2009] [as unlicensed contractor statutorily precluded from enforcing contract against defendant, claim for account stated necessarily failed]; *Martin H. Bauman Assoc. v H & M Intl. Transp.*, 171 AD2d 479, 485 [1st Dept 1991] [account stated claim summarily dismissed where, *inter alia*, underlying contract between parties not established]).

b. Sam and Second Source

Plaintiff demonstrates that it sent a 2010 statement of account to Sam, the receipt of which defendants do not dispute, that he failed to pay it, and as to which he did not object within a reasonable period of time. As defendants concede that the engagement letter establishes Second Source's payment obligation, plaintiff sufficiently states a cause of action for an account stated against Second Source. And as Sam's underlying indebtedness to plaintiff turns on his obligation under the agreement, which is ambiguous (*supra* IV.B.2.a), dismissing the cause of action as against him individually is inappropriate (*see Tannenbaum Helpern Syracuse & Hirschtritt LLP v Denheng Law Offices*, 127 AD3d 564, 564 [1st Dept 2015] [motion to dismiss breach of contract and account stated claims denied where contract contained ambiguity, presenting issues of fact]).

4. Quasi-contract claims (third and fourth causes of action)

An action to recover on a theory of unjust enrichment is based on the equitable principle that a party may not enrich itself unjustly at another's expense. (*Banco Popular N. Am. v Lieberman*, 75 AD3d 460, 463 [1st Dept 2010]). To prevail on a cause of action for unjust enrichment, the plaintiff must show: (1) the other party was enriched, (2) at that party's expense, and that "it is against equity and good conscience to permit [the other party] to retain what is sought to be recovered." (*Mandarin Trading Ltd. v Wildenstein,* 16 NY3d 173, 182 [2011]).

To recover for quantum meruit, or services rendered, the plaintiff must demonstrate: "(1) the performance of services in good faith, (2) the acceptance of the services by the person to whom they are rendered, (3) the expectation of compensation therefor, and (4) the reasonable value of the services." (*Caribbean Direct, Inc. v Dubset, LLC*, 100 AD3d 510, 511 [1st Dept 2012]).

Generally, quasi-contractual remedies are unavailable where there exists a valid and enforceable agreement, unless there is a bona fide dispute over the contract's existence. (*Clark-Fitzpatrick, Inc. v Long Is. R.R. Co.*, 70 NY2d 382, 388-389 [1987]; *MG W. 100 LLC v St. Michael's Prot. Episcopal Church*, 127 AD3d 624, 626 [1st Dept 2015]). A valid and enforceable agreement may also preclude quasi-contractual claims against non-signatory third parties. (*Randall's Is. Aquatic Leisure, LLC v City of New York*, 92 AD3d 463, 464 [1st Dept 2012], *lv denied* 19 NY3d 804).

Here, the terms of the engagement letter are coextensive with plaintiff's alleged quasi-contractual right to compensation for services rendered. Thus, the claims against all defendants are precluded, notwithstanding that the parties may dispute Sam's, Vaad's, and Zalman's rights

and obligations thereunder. (*Cf. AQ Asset Mgt., LLC v Levine*, 119 AD3d 457, 462 [1st Dept 2014] [as dispute covered by valid contract, unjust enrichment claims dismissed as to defendants, notwithstanding that they were not parties to agreement]; *Scarola Ellis LLP v Padeh*, 116 AD3d 609, 611 [1st Dept 2014] [as plaintiff and defendant considered co-representation agreement to be enforceable contract, plaintiff's quasi-contract claim precluded as it "squarely covers the (same) subject matter," notwithstanding that defendant did not sign agreement]).

V. CONCLUSION

Accordingly, it is hereby

ORDERED, that defendants' motion for an order partially dismissing the amended complaint is granted to the extent that the amended complaint is dismissed in its entirety as against defendants Vaad L'Hafotzas Sichos, Inc. and Zalman Chanin, and the third and fourth causes of action are dismissed as against the remaining defendants, and the motion is otherwise denied; it is further

ORDERED, that the action is severed and will continue against the remaining defendants; and it is further

ORDERED, that defendants Second Source Funding LLC and Sam Chanin are directed to serve an answer to the amended complaint within 20 days after service of a copy of this order with notice of entry.

ENTER:

Barbara Jaffe, JSC

DATED: September 29, 2015
New York, New York