Quik Park W. 57 LLC v Bridgewater Operating Corp.
2016 NY Slip Op 30469(U)
March 21, 2016
Supreme Court, New York County
Docket Number: 651524/2013
Judge: Eileen Bransten
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SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK: IAS PART 3

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QUIK PARK WEST 57 LLC, QUIK PARK EAST 66 LLC, QUIK PARK EAST 72 LLC, and QUIK PARK EAST 87 LLC,

Plaintiffs,

- against -

Index No. 651524/2013
Motion Date: 10/19/2015
Motion Seq. No. 004

BRIDGEWATER OPERATING CORPORATION,

Defendant.

-- X

BRANSTEN, J:

This action stems from Defendant Bridgewater Operating Corporation's ("Bridgewater") termination of a Management Agreement that governed Plaintiffs Quik Park West 57 LLC, Quik Park East 66 LLC, Quik Park East 72 LLC, and Quik Park East 87 LLC's (collectively, "Quik Park") operation of parking garages in Manhattan. Presently before the Court are the parties' cross-motions for summary judgment. For the reasons that follow, each motion is granted in part and denied in part.

I. **Background and Procedural History**

The facts of this matter have been discussed extensively in previous decisions of this Court. Thus, only details necessary to the instant motions are referenced herein.

A. *The Management Agreement*

On August 28, 2009, Bridgewater and Quik Park executed a "Parking Garage Management Agreement" ("Management Agreement"), pursuant to which Quik Park "accept[ed] engagement by Owner, to manage the Garages on an independent contractor basis as a valet parking facility with the level of operation and management commensurate with the First Class Standard . . . and in accordance with the terms and conditions hereinafter set forth." (Affidavit of Rafael Llopiz ("Llopiz Aff.") Ex. A ¶ 2(a).) The Management Agreement also provided that, "[u]nless otherwise set forth herein, Manager shall have the right to decide all manners of policy pertaining to the management of the Garages, including, without limitation by specification, operating hours, rates, labor schedules including number of personnel, and terms and conditions of monthly and daily space rentals." *Id.* Under the Agreement, for the first seven years of the term, Quik Park was to be paid a "Management Fee," equal to $100,000 per year, broken into monthly installments, as well as 50% of the "Net Revenue" to be paid on an annual basis. *Id.* ¶ 4(b)(1)(i).

The agreement was for a set term, which "commenc[ed] on September 1, 2009" and would expire "on August 31, 2019, *unless terminated in accordance with [the] Agreement.*" *Id.* ¶ 3 (emphasis added). Bridgewater could "terminate [the Management Agreement] immediately" if the Garages were condemned or suffered a casualty, or if Quik Park lost its license to operate the Garages. *Id.* ¶ 6. Bridgewater could also

terminate the agreement upon the occurrence of an "Event of Default." *Id.* ¶ 5. In pertinent part, the Management Agreement provided that:

> [u]pon the occurrence and during the continuance of an Event of Default, Owner may, at its option, deliver to Manager a notice of the occurrence of such Event of Default; and if Manager shall thereupon fail to cure such Event of Default within five (5) days after receipt of such notice, then Owner may, at its option, at any time during the continuance of such Event of Default, deliver to Manager a notice of election to terminate this Agreement as of the date that shall be five (5) days after the date of service of such notice (other than which shall not be curable), and upon the expiration of such five (5) day period, this Agreement and all right and interest of Manager hereunder, shall expire as fully and completely as if that day were the date herein definitely fixed for the expiration of this Agreement, and upon such termination of this Agreement, Manager shall vacate and surrender the Garages to Owner.

Id. ¶ 5(b)(1). "Events of Default" included, among other things:

> (1) Payment Default. Manager shall default in the payment when due of any Owner Disbursement and such default shall continue for a period of seven (7) days after written notice specifying such default shall be received by Manager from Owner; or
>
> . . .
>
> (3) Insurance. Manager shall default in the payment of any insurance premium with respect to any insurance policy required hereunder, fail to carry the minimum insurance required hereunder or fail to timely renew any insurance policy required hereunder, which failure continues for ten (10) days after written notice specifying such default shall be received by Manger from Owner; or
>
> . . .

> (8) Covenant Default. Manager shall default in the performance of any other covenant or agreement on the part of Manager to be performed hereunder and such default shall continue for a period of thirty (30) days after a written notice specifying such default shall be received by Manager . . . .

Id. ¶ 5(a).

As part of the parties' rights and obligations, the Management Agreement: required Quik Park to "deposit all cash receipts received by Manager in the operation of each Garage in a separate, segregated account for each Garage in the name of each Manager for the benefit of Owner . . . in which funds are not commingled with any other funds of Manager or Owner," *id.* ¶ 8(c)(1); defined certain expenditures as "Expenses of Manager" and "Costs of Operation," *id.* ¶ 4(a); required Quik Park to submit annual, audited financial statements, *id.* ¶ 4(f); permitted Bridgewater to conduct regular audits and to review Quik Park's books and records, and required Quik Park to fully cooperate with Bridgewater or its representatives, *id.* ¶ 8(b); and required Quik Park to "obtain, secure, pay for and maintain" various types of insurance in "not less than the indicated amounts." *Id.* ¶ 9(a).

B. *The Thacher Associates Investigation and Subsequent Termination*

Bridgewater hired Thacher Associates, LLC ("Thacher") to examine Quik Park's management of the Garages. Thacher is a corporate intelligence, investigative and integrity risk-management firm. *See* Affidavit of Daniel J. Kassa ("Kassa Aff.") ¶ 2. Thacher identified the following conduct as breaching the Management Agreement: (1)

daily transfers from the Garages' segregated accounts into a single sweep account; (2) use of sweep account funds to pay the personal expenses of Quik Park's president and his family and the operating expenses of garages unrelated to the Management Agreement, while referring to these payments as "loans," *id.* ¶ 13 n.1; and, (3) failure to maintain the required levels of insurance coverage for worker's compensation and commercial general liability and failure to provide any evidence of crime insurance or business interruption insurance.

On April 24, 2013, Bridgewater sent Quik Park a "Notice of Termination" ("Termination Notice"), which stated that Bridgewater was terminating the Management Agreement and "any permission [Quik Park] ha[d] to enter upon, use, operate and manage the Garages . . . ." (Affirmation of Norman Flitt Ex. C at 1.) The Termination Notice stated that Quik Park's conduct "not only breache[d its] obligations under the Agreement[,] but also [was] totally contrary to [its] responsibilities as a fiduciary" and could not be cured. *Id.* at 3. The notice cited the following violations of the Management Agreement: commingling and diversion of funds, in violation of paragraph 8(a); failure to submit annual, audited financial statements, in violation of paragraph 4(f); and failure to fully cooperate with Thacher during the course of its review, in violation of paragraph 8(b). It also mentioned Quik Park's "fail[ure] (according to the Certificates of Insurance provided to Thacher) to maintain levels of insurance coverage as required by paragraph 9 of the Agreement." *Id.* According to Thacher, around the time that the Termination

Notice was sent, the amount of outstanding "loans" had grown to more than $365,000. Kassa Aff. ¶ 13 n.1.

C. *The Instant Litigation*

On April 29, 2013, Quik Park commenced the instant action, asserting claims for declaratory judgment, breach of the covenant of good faith and fair dealing, and attorneys' fees. In addition, Quik Park sought both a preliminary and a Yellowstone injunction. On May 31, 2013, Bridgewater interposed counterclaims for declaratory judgment, breach of fiduciary duty, breach of contract, punitive damages, an accounting, and attorneys' fees.

Quik Park first sought a preliminary injunction or, in the alternative, a Yellowstone injunction. According to Quik Park, while a temporary restraining order was in effect during the pendency of the injunction motion, it ceased its practice of commingling funds and deposited $365,977.71 into the Garages' accounts. *See* Llopiz Aff. ¶ 7. By decision and order dated October 9, 2013 ("PI Decision"), this Court denied the motion, concluding that Quik Park was not entitled to a Yellowstone injunction, since the Management Agreement was not a commercial lease. The Court also denied the motion for preliminary injunctive relief, on the grounds that Quik Park failed to demonstrate irreparable harm. Quik Park subsequently moved to reargue the Court's denial of its Yellowstone injunction. This reargument motion was denied, and Quik Park

later withdrew its notices of appeal from both orders and continued to operate the Garages.

Defendant Bridgewater then filed a motion for partial summary judgment on its declaratory judgment counterclaim, as well as dismissal of Quik Park's claims for preliminary injunction, Yellowstone injunction, and declaratory judgment. In a decision and order dated June 2, 2015 ("June 2nd Decision"), the Court granted Bridgewater's motion insofar as it sought dismissal of the injunction claims. The Court also granted Bridgewater's motion for summary judgment on its counterclaim for declaratory judgment to the extent that it determined that the Management Agreement was a license, which was terminated by Bridgewater, resulting in Quik Park no longer having any right to enter, operate or manage the Garages. Since Quik Park's declaratory judgment claim in the complaint sought the opposite – a declaration that the Management Agreement was a lease and that Bridgewater could not terminate the Management Agreement, removing Quik Park from the Garages – the Court dismissed those portions of Quik Park's claim. After the June 2nd Decision, the only remaining piece of Quik Park's declaratory judgment claim seeks a declaration that Quik Park did not breach the Management Agreement, such that the fees due under the Management Agreement were withheld improperly by Bridgewater. Quik Park and Bridgewater filed cross-appeals of the June 2nd Decision. These appeals are still pending.

II. Analysis

Concurrent with the cross-appeals, Quik Park filed its own motion for partial summary judgment, which is currently before the Court. Quik Park seeks partial summary judgment granting its claim for breach of contract, notwithstanding that no breach of contract claim is asserted in the Complaint. Instead, Quik Park appears to ask the Court, without explanation or discussion in its brief, to conform its pleading to the evidence, pursuant to CPLR §§ 3025(c) or 3017(a), and then grant summary judgment in its favor on the newly-deemed claim. Quik Park also seeks summary judgment in its favor on its declaratory judgment, breach of the covenant of good faith and fair dealing, and attorneys' fees claims, as well as dismissal of Bridgewater's second counterclaim for breach of fiduciary duty. Finally, Quik Park demands judgment in the amount of $716,666.66 for its purported lost Management Fees, as well as referral to a special referee for a computation of damages and attorneys' fees.

Bridgewater filed a cross-motion, seeking partial summary judgment in its favor on its accounting and attorneys' fees counterclaims. In addition, Bridgewater sought to compel the production of certain documents requested in its Second Notice for Discovery and Inspection. The Court denied Bridgewater's cross-motion to compel on the October 6, 2015 record (Alan F. Bowin, CSR). The remainder of Quik Park's motion and Bridgewater's cross-motion is presently before the Court.

A. *Summary Judgment Standard*

Pursuant to CPLR 3212(b), "[t]o obtain summary judgment, the movant 'must make a prima facie showing of entitlement to judgment as a matter of law, tendering sufficient evidence to demonstrate the absence of any material issues of fact.'" *Madeline D'Anthony Enters., Inc. v. Sokolowsky*, 101 A.D.3d 606, 607 (1st Dep't 2012) (quoting *Alvarez v. Prospect Hosp.*, 68 N.Y.2d 320, 324 (1986). "Failure to make such prima facie showing requires a denial of the motion, regardless of the sufficiency of the opposing papers." *Alvarez*, 68 N.Y.2d at 324. If the movant makes the necessary showing, the burden shifts to the opposing party "'to produce evidentiary proof in admissible form sufficient to establish the existence of material issues of fact which require a trial of the action.'" *Madeline D'Anthony Enters., Inc.*, 101 A.D.3d at 607 (quoting *Alvarez*, 68 NY2d at 324).

B. *Quik Park's Motion for Summary Judgment*

1. <u>Quik Park's Third Claim – Declaratory Judgment</u>

Through its motion, Quik Park seeks judgment as to the remaining portion of its declaratory judgment claim, specifically that Bridgewater breached the Management Agreement by failing to provide Quik Park with a contractually-proper notice of termination, as well as the opportunity to cure any purported defect. In addition, Quik Park disputes again whether it actually was in default under the Management Agreement.

Through this portion of Quik Park's motion, both Quik Park and Bridgewater attempt to reargue determinations made by the Court in its June 2nd Decision. For example, Bridgewater presents only one argument in opposition to Quik Park's contention that it failed to give Quik Park the requisite contractual notice of default and opportunity to cure. Bridgewater argues that Quik Park's alleged malfeasance in commingling funds and failing to maintain adequate insurance coverage constituted "incurable breaches," entitling Bridgewater to terminate the Management Agreement immediately without affording an opportunity to cure. This argument was addressed and rejected in the June 2nd Decision. *See* June 2nd Decision at 17-21. The Court likewise adheres to the same reasoning here. Since Bridgewater presents no compelling argument in opposition, this portion of Quik Park's motion is granted.

Quik Park also contends that it did not breach the Management Agreement by, *inter alia*, commingling funds and failing to carry adequate insurance coverage. Again, this Court concluded in its June 2nd Decision that issues of fact existed as to the existence of breaches, as well as to whether Quik Park cured those breaches on a timely basis. *Id.* at 19-21. Quik Park attempts to reargue the point through this motion; however, it highlights the same facts and the same arguments already presented, which fail to provide a basis to grant summary judgment in its favor on this point.

Accordingly, the Court concludes that issues of fact remain for trial as to whether Quik Park breached the Management Agreement through, *inter alia*, its commingling of funds and its failure to carry adequate insurance coverage and whether such default was

rectified at the time of termination. However, the issue as to whether Bridgewater's notice of termination complied with its contractual obligation under the Management Agreement is resolved. Therefore, the branch of Quik Park's motion that seeks a declaratory judgment that the Bridgewater failed to give it the requisite contractual notice of default and opportunity to cure is granted.

2. Quik Park's Fourth Claim – Breach of the Covenant of Good Faith and Fair Dealing

Quik Park next contends that it is entitled to summary judgment on its claim for breach of the covenant of good faith and fair dealing. Nevertheless, Quik Park makes no independent argument in support of summary judgment on this claim; instead, it seems to present its summary judgment arguments in support of declaratory judgment and good faith and fair dealing in the same section, without differentiating between the two claims. *See* Quik Park's Moving Br. at 12-20. Accordingly, Quik Park has provided no basis for the granting of summary judgment on this claim beyond the bases already discussed above with respect to the declaratory judgment claim.[1] Quik Park's motion for summary judgment on the breach of the covenant of good faith and fair dealing therefore must be denied.

[1] In addition, this presentation of the declaratory judgment and the good faith and fair dealing claims as seemingly interchangeable begs the Court to ask whether the claims are duplicative.

3. Quik Park's Fifth Claim – Attorneys' Fees

Next, Quik Park seeks summary judgment on its claim for attorneys' fees, arguing that it has prevailed on the "central issue" in the litigation – whether Bridgewater properly terminated the Management Agreement. *See* Quik Park's Reply Br. at 16-17.

Paragraph 34 of the Management Agreement provides that:

> [i]f either party commences legal proceedings for any relief against the other party arising out of this Agreement ... the losing party shall pay the prevailing party's reasonable attorneys' fees and disbursements upon final judgment thereof.

(Llopiz Aff. Ex. A ¶ 34.)

Quik Park's motion for judgment on this claim is premature. The litigation is ongoing, and at this juncture, there is no "losing party" or "prevailing party" for the purpose of assessing fees under Paragraph 34. Therefore, Quik Park's motion for summary judgment on this claim is denied without prejudice to refiling after all other claims in this action are resolved. *See, e.g., Moskowitz v. Jorden*, 27 A.D.3d 305, 307 (1st Dep't 2006) (deeming award of attorneys' fees premature where claims remained in dispute such that the court could not determine the "prevailing party").

4. Quik Park's Newly-Asserted Breach of Contract Claim

As discussed above, there is no breach of contract claim in Quik Park's complaint. Instead, Quik Park asks this Court to conform the evidence to the pleadings to deem that a breach of contract claim has been stated. Quik Park then requests that it be granted summary judgment on this newly-stated claim.

Quik Park's request appears to have its genesis in the June 2nd Decision, in which the Court held that the Management Agreement was a license for a defined, ten-year term and that "Bridgewater's revocation of the license gives rise to a *potential* breach of contract claim." (June 2nd Decision at 13) (emphasis added). Notably, Quik Park makes no reference to the breach of contract claim in its brief. Instead, the Court is left to surmise that the same section of Quik Park's brief in which it lumps together arguments in support of its declaratory judgment and good faith and fair dealing claims – without specifically referring to either – also applies to this new breach of contract claim. *See* Quik Park's Moving Br. at 12-20.

Since Quik Park makes no argument – or even reference to – how or why the Court should deem the evidence submitted on this motion to conform to a breach of contract claim, the Court declines to deem a breach of contract asserted at this juncture. Quik Park has options under the CPLR to add such a claim to its pleading, although since the June 2nd Decision on which this breach of contract claim is based is on appeal, the Court's determination of the propriety of any such motion will await the disposition of this appeal.

Even assuming for the sake of argument that such a claim had been substantiated and that the argument presented on pages 12-20 of Quik Park's moving brief applied to this breach of contract claim, summary judgment nonetheless would be denied for the reasons addressed above. Issues of fact remain for trial as to whether Quik Park breached the Management Agreement through, *inter alia*, its commingling of funds and its failure

to carry adequate insurance coverage and whether such default was rectified at the time of termination.

In opposition to summary judgment, Bridgewater argues that Quik Park failed to mitigate its damages sufficiently. Bridgewater's argument goes to the amount of damages potentially due to Quik Park, not to the viability of its claim. *See, e.g., Bernstein v. Freudman*, 180 A.D.2d 420, 421 (1st Dep't 1992) ("Defendants now assert as an affirmative defense that plaintiffs failed to mitigate their damages. Parties generally have a duty to mitigate damages, the satisfaction of which generally presents an issue of fact."). Therefore, Bridgewater's mitigation argument would fail to provide a basis for dismissal of the breach of contract claim on summary judgment.

5. Quik Park's Remaining Affirmative Summary Judgment Arguments

Quik Park also seeks judgment in the amount of $716,666.66 for its fixed "Management Fees" losses, purportedly due under Paragraph 4(b) of the Management Agreement. These damages appear to be the damages sought, at least in part, for Quik Park's breach of the covenant of good faith and fair dealing claim. Since Quik Park has not received judgment on this claim, this request for damages is premature.

The same is true for Quik Park's request for a reference to a special referee for a determination of "Quik Park's damages relating to … its share of 'Net Revenue' pursuant to § 4(b) of the Agreement, and … its attorneys' fees and costs incurred in this action pursuant to § 34 of the Agreement." *See* Quik Park's Order to Show Cause at 2. Quik

Park has not received judgment on its breach or attorneys' fees claims; therefore, no reference is granted at this juncture, assuming that such a reference would be warranted.

6. Bridgewater's Second Counterclaim – Breach of Fiduciary Duty

Quik Park seeks dismissal of Bridgewater's breach of fiduciary duty claim on the grounds that the June 2nd Decision determined that the Management Agreement did not create any "fiduciary relationship" between Plaintiffs and Bridgewater. Quik Park is overstating the reach of the June 2nd Decision. In that opinion, the Court addressed Bridgewater's contention that the Management Agreement created an "agent-principal" relationship that was revocable at will. *See* June 2nd Decision at 15. The Court disagreed, determining "[a]s there was no agency relationship, *no fiduciary duty was created between a principal and an agent.*" *Id.* at 16 (emphasis added). The Court simply responded to the particular argument raised.

Nevertheless, Bridgewater identifies no other fiduciary duty, aside from this "agent-principal" relationship, owed to it by Quik Park in opposition to Quik Park's motion. Instead, Bridgewater seeks to have the Court "reconsider" its previous ruling. *See* Bridgewater's Opp. Br. at 12. First, this is not a motion for reconsideration. Second, Bridgewater's argument makes no rebuttal to Quik Park's contention that it has failed to substantiate the existence of any fiduciary duty.

Bridgewater's counterclaim appears to assert a fiduciary duty stemming from the contractual relationship between the parties. In support, Bridgewater alleges that Quik

Park commingled and misappropriated funds, which are the same allegations underlying Bridgewater's breach of contract counterclaim. *See* Counterclaims ¶¶ 89-91, 96. These allegations render Bridgewater's breach of fiduciary duty counterclaim duplicative of its breach of contract claim. A breach of fiduciary duty claim will be dismissed as duplicative where, as here, it fails to assert a duty "independent of the contract itself." *William Kaufman Org., Ltd. v. Graham & James LLP*, 269 A.D.2d 171, 173 (1st Dep't 2000) ("[T]he same conduct which may constitute the breach of a contractual obligation may also constitute the breach of a duty arising out of the relationship created by contract but which is independent of the contract itself."); *see also Brasseur v. Speranza*, 21 A.D.3d 297, 298 (1st Dep't 2005) (dismissing breach of fiduciary duty claim as duplicative where "there is no allegation that [defendants] breached a duty other than, and independent of, those contractually imposed"). Since Bridgewater failed to assert any fiduciary relationship between the parties that is independent of the Management Agreement, Bridgewater's fiduciary duty claim is dismissed.

7. Bridgewater's Third Counterclaim – Breach of Contract

Bridgewater's breach of contract claim asserts the same breaches addressed at length above, i.e. commingling of funds and failure to maintain adequate insurance coverage. For the same reasons already identified, Quik Park has not demonstrated a basis for dismissal of this claim.

8. Bridgewater's Fourth Counterclaim – Conversion

Bridgewater maintains that Quik Park converted the funds allegedly commingled and used for unauthorized purposes. Nonetheless, "[a] cause of action for conversion cannot be predicated on a mere breach of contract." *Jeffers v. Am. Univ. of Antigua*, 125 A.D.3d 440, 443 (1st Dep't 2015). Here, Bridgewater's conversion counterclaim alleges no facts independent of the facts support its breach of contract claim. *Id.* Accordingly, the conversion claim is dismissed.

9. Bridgewater's Fifth Counterclaim – Accounting

Bridgewater's accounting claim is premised on the terms of the Management Agreement. For example, Section 8(a) states that

> All records pertaining to cash receipts and records of treadle counts at the Garages including, without limitation, invoices, monthly stickers, cash register tapes, cashier reports, daily reports and property slips shall be the property of [Quik Park], *shall be maintained by [Quik Park] and, until delivered by [Quik Park] to [Bridgewater] for storage or destruction, shall be available for examination and/or audit to [Bridgewater] and its authorized representatives at [Quik Park]'s office location in New York City during business hours.*

(Llopiz Aff. Ex. 1 ¶ 8(a).) Quik Park maintains that this provision does not survive the termination of the Management Agreement and that it therefore has no duty to provide such information to Bridgewater. There is nothing in Paragraph 8(a) to support that interpretation. To the contrary, the provision states that the receipts and records shall be maintained until delivered to Bridgewater for its storage or destruction. In the meantime,

such records "shall be available" to Bridgewater for its inspection at Quik Park's office. Accordingly, Quik Park has not provided a basis for dismissal of this claim.

Conversely, the other provisions cited by Bridgewater – Paragraphs 4(e), 4(f), and 8(b) – each reference the term of the Agreement. *See, e.g.*, ¶ 4(f) ("At the end of each Management Year during the Term, [Quik Park] shall submit to [Bridgewater] an audited statement ... for the preceding twelve (12) months ..."). This contractual obligation extends only to the "term" of the Agreement, which has expired due to Bridgewater's termination. Therefore, the failure to provide such audited statements are not the basis for a current accounting claim. For these reasons, summary judgment is granted in part and denied in part.[2]

10. Bridgewater's Sixth Counterclaim – Attorneys' Fees

Bridgewater's counterclaim for attorneys' fees is a mirror image to Quik Park's fee claim. Just as Quik Park's motion seeking summary judgment on its own claim was premature, so too is Quik Park's motion seeking dismissal of the mirror image claim asserted by Bridgewater. Accordingly, this portion of Quik Park's motion is denied.[3]

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[2] Bridgewater's cross-motion for summary judgment is denied. Bridgewater has offered nothing in its cross-motion in favor of summary judgment that it did not offer in opposition to Quik Park's motion.

[3] Bridgewater likewise cross-moves, seeking judgment on its attorneys' fees claim. For the same reasons, Bridgewater's cross-motion is denied without prejudice to refiling after all other claims in this litigation are resolved.

11. Bridgewater's Punitive Damages Request

Finally, Quik Park seeks dismissal of Bridgewater's demand for punitive damages for its breach of contract counterclaim.

As the Court of Appeals explained in *Rocanova v. Equitable Life Assurance Soc'y of U.S.*, 83 N.Y.2d 603, 613 (1994), "[p]unitive damages are not recoverable for an ordinary breach of contract as their purpose is not to remedy private wrongs but to vindicate public rights." Accordingly, punitive damages are availing only where "the breach of contract also involves a fraud evincing a high degree of moral turpitude and demonstrating 'such wanton dishonesty as to imply a criminal indifference to civil obligations" and then only where "the conduct was aimed at the public generally." *Id.* There is no such pleading here and no evidence supporting such a claim offered by Bridgewater on summary judgment. Accordingly, Bridgewater's punitive damages request for its breach of contract claim is dismissed.

III. Conclusion

Accordingly, it is hereby

ORDERED that Quik Park's motion for partial summary judgment is granted to the extent that:

(i) the branch of Quik Park's motion that seeks a declaratory judgment that the Bridgewater failed to give it the requisite contractual notice of default and opportunity to cure is granted; and

[* 20]

(ii) Bridgewater's claim for accounting is dismissed insofar as it relies upon Paragraphs 4(e), 4(f), and 8(b) of the Management Agreement; and

(iii) Bridgewater's counterclaims for breach of fiduciary duty and conversion, as well as its request for punitive damages in connection its breach of contract counterclaim, are dismissed in their entirety; and it is further

ORDERED that Quik Park's motion is otherwise denied; and it is further

ORDERED that Bridgewater's cross-motion for accounting and attorneys' fees is denied; and it is further

ORDERED that the remaining causes of action and counterclaims are severed and the action shall continue; and it is further

ORDERED that counsel are directed to appear for a status conference in Room 442, 60 Centre Street, on Tuesday, April 19, 2016 at 11:00 am.

Dated: New York, New York
March 21, 2016

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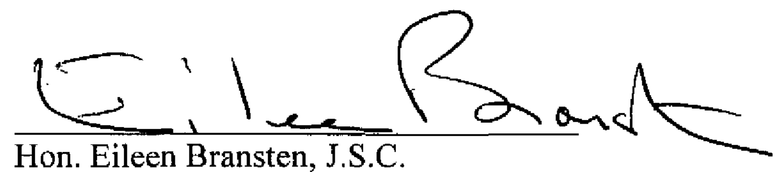

Hon. Eileen Bransten, J.S.C.