

**Tekiner v Bremen House Inc.**

2022 NY Slip Op 33682(U)

October 25, 2022

Supreme Court, New York County

Docket Number: Index No. 657193/2020

Judge: Joel M. Cohen

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This opinion is uncorrected and not selected for official publication.

SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF NEW YORK: COMMERCIAL DIVISION PART 03M

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YASEMIN TEKINER,

Plaintiff,

- v -

BREMEN HOUSE INC., BREMEN HOUSE TEXAS, INC.,  
GERMAN NEWS COMPANY, INC., GERMAN NEWS  
TEXAS, INC., 254-258 W. 35TH ST. LLC, BERRIN  
TEKINER, GONCA TEKINER, BILLUR AKIPEK, ZEYNEP  
TEKINER,

Defendants.

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INDEX NO. 657193/2020

MOTION DATE 09/22/2022

MOTION SEQ. NO. 033

**DECISION + ORDER ON  
MOTION**

HON. JOEL M. COHEN:

The following e-filed documents, listed by NYSCEF document number (Motion 033) 660, 661, 662, 663, 664, 665, 686, 697

were read on this motion to DISMISS.

Defendants Bremen House Inc., German News Company, Inc., Berrin Tekiner (“Berrin”), Gonca Chelsea (“Gonca”), and Billur Akipek (“Billur”) (collectively, “Defendants”) move to dismiss the Twelfth Cause of Action in Plaintiff Yasemin Tekiner’s (“Yasemin”) Verified Second Amended (“SAC”) with prejudice, pursuant to CPLR 3211(a)(1) and (a)(7). The Twelfth Cause of Action alleges that Berrin, Gonca, and Billur aided and abetted breaches of fiduciary duty (NYSCEF 548). For the following reasons, Defendants’ motion is **granted in part**.

“When reviewing a defendant’s motion to dismiss a complaint for failure to state a cause of action, a court must ‘give the complaint a liberal construction, accept the allegations as true and provide plaintiffs with the benefit of every favorable inference’” (*Nomura Home Equity*

*Loan, Inc., Series 2006-FM2, by HSBC Bank USA, N.A. v Nomura Credit & Capital, Inc.*, 30 NY3d 572, 582 [2017] [citation omitted]).

Under Delaware law, “[a] a successful claim for aiding and abetting a breach of fiduciary duty requires proof of four elements: ‘(1) the existence of a fiduciary relationship; (2) the fiduciary breached its duty; (3) a defendant, *who is not a fiduciary*, knowingly participated in a breach; and (4) damages to the plaintiff resulted from the concerted action of the fiduciary and the nonfiduciary’” (*Cargill, Inc. v JWH Special Circumstance LLC*, 959 A2d 1096, 1125 [Del Ch 2008] [emphasis added]).

Yasemin’s claim against Billur must be dismissed. It is undisputed that Billur owed Yasemin fiduciary duties as her trustee under the Yasemin Tekiner 2011 Descendants Trust (the “Yasemin Trust”). Since an aiding and abetting a breach of fiduciary duty claim can only be asserted against a non-fiduciary (*Cargill*, 959 A2d at 1125; *Mesirov v Enbridge Energy Co., Inc.*, 2018 WL 4182204, at \*13 [Del Ch 2018]), and Yasemin concedes this point in her brief (NYSCEF 686 at 4 n 3), the claim against Billur must be dismissed.

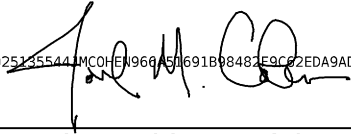
For the same reasons, Yasemin’s claim against Berrin is dismissed. While Yasemin contends that “it is conceivable that . . . Berrin’s status as a protector would not be deemed sufficient to amount to a fiduciary role” (NYSCEF 686 at 6), Berrin concedes the point in her reply brief (NYSCEF 697 at 1). Furthermore, unlike in *IMO Ronald J. Mount 2012 Irrevocable Dynasty Tr. U/A/D December 5, 2012* (2017 WL 4082886, at \*7 [Del Ch 2017]), where the court held that plaintiff’s claim of breach of fiduciary duty against the trust protector failed because “the Trust Instrument states that ‘[t]he Trust Protector, acting as such, shall serve in a non-fiduciary capacity,’” Yasemin does not point to any language in the Trust documents that would call Berrin’s fiduciary duties into question.

Finally, Yasemin's claim against Gonca remains. Defendants argue that Yasemin cannot plead the "knowing participation" element of a claim for aiding and abetting a breach of fiduciary. "This element is satisfied when the aider and abettor 'act [s] with the knowledge that the conduct advocated or assisted constitutes such a breach'" (*In re Rural Metro Corp.*, 88 A3d 54, 97 [Del Ch 2014]). "Under Delaware law, one who knowingly participates with a fiduciary in a breach of the latter's duty is liable to the beneficiary of the trust relationship" (*Associated Imports, Inc. v ASG Indus., Inc.*, 5953, 1984 WL 19833, at \*12 [Del Ch 1984], *aff'd sub nom.*, 497 A2d 787 [Del 1985]). Plaintiff alleges that Berrin, Gonca, and Billur were all senior executives in the Company's business and that, at all times, they were aware of and participated in any and all important business decisions, including decisions made regarding Yasemin and the Yasemin Trust (NYSCEF 548 ¶ 164). Plaintiff specifically alleges that Gonca believed that Plaintiff's role in the Yasemin Trust and the Company's business posed a threat to her ability to continue self-dealing and advocated for Plaintiff to be stripped of her roles and powers; that Gonca demanded that Plaintiff be removed as a Trustee of the Yasemin Trust and Berrin and Billur agreed to remove her; that Gonca, Berrin, and Billur coordinated their efforts to illegally retaliate against Plaintiff, including by coordinating a response to Plaintiff's demand that Billur authorize a shareholder dispute that resulted in her removal as Trustee from the Yasemin Trust; and that Gonca personally sought to benefit from the breaches by solidifying her own power and continuing her pattern of self-dealing (*id.*). These allegations are sufficient to allege a claim for aiding and abetting a breach of fiduciary duty. Whether Yasemin can prove these allegations is a matter to be resolved as the litigation proceeds.

Accordingly, it is

**ORDERED** that Defendants' motion to dismiss Yasemin's Twelfth Cause of Action in her Second Amended Complaint is **granted in part**, insofar as the claim alleged against Berrin and Billur is dismissed, and otherwise denied.

This constitutes the Decision and Order of the Court.

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10/25/2022  
DATE

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JOEL M. COHEN, J.S.C.

CHECK ONE:	<input type="checkbox"/>	CASE DISPOSED	<input checked="" type="checkbox"/>	NON-FINAL DISPOSITION	
	<input type="checkbox"/>	GRANTED	<input type="checkbox"/>	GRANTED IN PART	<input type="checkbox"/>
			DENIED		OTHER
APPLICATION:	<input type="checkbox"/>	SETTLE ORDER		SUBMIT ORDER	
CHECK IF APPROPRIATE:	<input type="checkbox"/>	INCLUDES TRANSFER/REASSIGN		FIDUCIARY APPOINTMENT	<input type="checkbox"/>
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