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

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BANNER RIDGE SECONDARY MASTER FUND III, L.P., BANNER RIDGE SECONDARY FUND III CO, LP

Plaintiffs,

- v -

NEWBURY EQUITY PARTNERS V L.P., NEWBURY PARTNERS LLC,

Defendants.

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INDEX NO. 650270/2022

MOTION DATE N/A

MOTION SEQ. NO. 001

DECISION + ORDER ON MOTION

HON. JOEL M. COHEN:

The following e-filed documents, listed by NYSCEF document number (Motion 001) 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 29, 30, 31

were read on this motion to DISMISS.

Plaintiffs Banner Ridge Secondary Master Fund III, L.P. and Banner Ridge Secondary Fund III Co, LP (together, "Banner Ridge" or "Plaintiff") allege that Defendants Newbury Equity Partners V L.P. and Newbury Partners LLC (together, "Newbury" or "Defendant") breached an agreement to acquire certain limited partnership interests. In Count I of the Complaint, Banner Ridge asserts that Newbury breached a purportedly binding Letter of Intent. In Count II, Banner Ridge alleges that Newbury breached a November 15, 2021, agreement purportedly reached while the parties and their counsel were drafting a definitive agreement (which was never signed) in the wake of the Letter of Intent. Finally, in the alternative, in Count III Banner Ridge asserts a quasi-contract claim for Promissory Estoppel based upon an email exchange prior to the signing of the Letter of Intent.

Newbury now moves to dismiss those claims for failure to state viable causes of action. For the reasons set forth below, the motion is granted.

BACKGROUND

Banner Ridge and Newbury are private equity firms. Among other things, they identify investment-worthy private equity managers and provide liquidity solutions to their limited partners, including through the acquisition of limited partnership interests (NYSCEF 1 ¶2 ["Compl."]).

According to the Complaint, in the Fall of 2021 Banner Ridge employed a broker, Melting Point Solutions, LLC ("Melting Point"), to help Banner Ridge sell its limited partnership interest in RVF LMG, a fund managed by non-party The Riverside Company (the "Asset") (Compl. ¶¶3, 15). The sale was described to potential buyers as "a single stage, 'best and final' auction process" (NYSCEF 14 [Goldstein Affirm, Ex. A, Sept. 21, 2021 Emails]). The solicitation also provided that "[t]he broker fee will be paid by the Seller upon transfer. Please provide your gross bids (inclusive of broker fee) via email or LOI by the bid deadline of Thursday, October 14th at 5pm ET" (*id.*). Ultimately, three potential buyers, including Newbury, submitted indications of interest to purchase the Asset (Compl. ¶17).

Chris Jaroch ("Joroch"), a Partner at Newbury, replied to the email solicitation stating that there was an "interest here, probably for 100% of this position" (Goldstein Affirm, Ex. A, Sept. 21, 2021 Emails). Thereafter, Jaroch was sent a Non-Disclosure Agreement (*id.*). On October 21, 2021, Jaroch emailed Chuck Doppelt ("Doppelt") at MeltingPoint stating, "[p]lease find attached our offer for Project Ford" (NYSCEF 15 [Goldstein Affirm, Ex. B, Oct. 22, 2021 Emails at 4]). The attached document stated that it was a "letter of intent to acquire a certain

limited partnership interest held by a seller … advised by … Melting Point" ((Compl., Ex. 1 ["LOI"]).

The LOI, signed by Jaroch, proposed that "Newbury would acquire the [Asset]" and that the Purchase Price "would be $18,750,000," subject to certain adjustments (*id.* at 1). The LOI provides that Newbury was to assume "responsibility" over "[a]ll of [Banner Ridge's] obligations and liabilities under the limited partnership agreements related to the Asset, subsequent to the closing" (*id.*). The LOI also indicated that "[e]ach party would bear its own expenses in connection with the transaction." (*id.*). And the LOI obligated the parties to "seek to execute a Definitive Purchase Agreement ("Definitive Agreement") containing representations, warranties, covenants, agreements and provisions agreed to the parties." (*id.*). The LOI laid out several "Excluded Obligations" in that Newbury "would not be responsible for" certain taxes or "clawback obligation[s]" (*id.*).

The LOI provided that "[t]he parties shall seek to execute a Definitive Purchase Agreement ('Definitive Agreement') containing representations, warranties, covenants, agreements and provisions agreed to by the parties" (*id.* at 2). Further, "[t]he closing would be subject to," among other things, "[s]atisfaction of the conditions specified in the Definitive Agreement, which may include obtaining legal opinions and, without limitation, applicable third-party consents and waivers" (*id.*). It provided that "[t]he parties shall use all reasonable efforts to execute the Definitive Agreement on or before November 15, 2021 and close on or before December 31, 2021" (*id.*). Finally, the LOI stated that, "[i]f the foregoing is acceptable to the Seller, please sign this letter where indicated below and return it by 5:00 PM EDT on October 25, 2021 to the undersigned . . . , in order for it to become effective." (*id.*).

The next day, Doppelt replied to Jaroch's offer: "Thanks again for the work done on Project Ford and the LOI. We just spoke with the seller and they will be countersigning the LOI shortly – Congratulations! The bids were tight, but your willingness to take the entire position was a differentiator. Once we get the LOI countersigned we'll officially introduce you and then we can move to PSAs. Thanks to you and your team for being easy to work with and we look forward to a smooth PSA/transfer process." (Goldstein Affirm, Ex. B, Oct. 22, 2021 Emails at 3]). Jaroch responded, "Many thanks for the update – we look forward to moving ahead from here…" (*id.*).

Later that day, Doppelt replied to Jaroch, "I just got off the phone with the seller's internal counsel who is reviewing the LOI and they wanted to just verify that the bid is [Investment Committee] approved and no further approvals are needed. Can you verify this?" (Compl. ¶25, Ex. 2, Oct. 22, 2021 Emails at 2). Doppelt also raised some other issues as to adding signature blocks for the two sellers and using the seller's form PSA as a starting point (*id.*). Jaroch responded: "[a] few notes: We are ready to proceed at this price, subject to legal due diligence, getting an agreeable form of PSA, etc." and went on to address the other issues (*id.*). "Satisfied with this confirmation and with the material deal terms being offered by Newbury, Banner Ridge explicitly 'accepted' Newbury's offer by countersigning and returning the LOI on October 22, 2021 – rendering it 'effective' under the plain language of the agreement" (Compl. ¶27).

The parties then proceeded to discuss the details of the asset purchase through the negotiation of a "Definitive Purchase Agreement," which the parties termed the "PSA" (Compl. ¶28). On October 26, 2021, Banner Ridge delivered a draft PSA to Newbury for its review. Newbury (via legal counsel) returned comments on the draft PSA on November 4. Banner Ridge

(via legal counsel) then turned another draft four days later. In the email communications, the attorneys noted that the PSA remained subject to their clients' review (Compl. ¶30; Ex. 3, Nov. 4-16, 2021 Emails).

Newbury returned additional PSA comments on November 10 and proposed a call to discuss open points, which call the parties held the following day, November 11 (Compl. ¶31). After the November 11 call, Banner Ridge sent an email to Newbury identifying three "open points" that still needed to be negotiated. Banner Ridge then followed up on the morning of November 12, noting: "Wanted to follow up with you to see if you had a chance to discuss the proposal we made after our call yesterday. It would be great to get the PSAs finalized and signed up today if possible." (Compl. ¶32; Ex. 3, Nov. 4–16, 2021 Emails at 6).

Newbury's counsel responded later that afternoon and stated: "We spoke to our client on the three points and our responses are set forth in red below." On one of the points, Newbury was "willing to accept" Banner Ridge's proposal. On the remaining two points, Newbury continued to disagree with Banner Ridge's position (Compl. ¶33; Ex. 3, Nov. 4–16, 2021 Emails at 5–6). In a follow-up email that same day (November 12), Banner Ridge conceded one of the two remaining open points. On the last point, regarding "materiality scrape" language in the indemnification provisions of the PSA, Banner Ridge stated it believed there was no "substantive disagreement" but had difficulty "follow[ing] [Newbury's] proposed language." Banner Ridge proposed revisions to clause 11.1(a) and 11.2(a) of the PSA in order to "solve the issue." Banner Ridge also noted that it had removed clause 11.1(e) of the PSA in an earlier draft but had failed to highlight the deletion at the time (Compl. ¶34; Ex. 3, Nov. 4–16, 2021 Emails at 4).

In reply, Newbury's counsel stated that she would use the weekend to review the updated draft with her client (Compl. ¶35; Ex. 3, Nov. 4–16, 2021 Emails at 4). On November

15, Newbury's counsel responded: "We are okay with the deletion of clause 11.1(e), but have clarified the materiality scrape . . . language in [clauses] 11.1 and 11.2." Attached to her email was an updated version of the PSA incorporating those revisions. She then noted: "Lastly, once you are signed off on the PSA, please populate the Schedules, including, among others, the list of Portfolio Property Agreements." Representatives from Newbury were copied on this November 15 email from Newbury's counsel (Compl. ¶36; Ex. 3, Nov. 4–16, 2021 Emails at 2-3).

A few hours later, Banner Ridge's counsel responded, "We were ok with [Newbury's] revisions. I've attached a proposed execution version of the first PSA . . . Also attaching the proposed execution version of the second PSA . . . Please confirm if you are signed off and we can exchange signatures tomorrow" (Compl. ¶37; Ex. 3, Nov. 4–16, 2021 Emails at 2).

On November 16, 2021, Jaroch responded: "we are evaluating" (Compl. ¶38; Ex. 3, Nov. 4–16, 2021 Emails at 1). Later that day, Banner Ridge's counsel replied, "any update? We were hoping to exchange pages today, I think all we did was break out the Schedules you've already seen by percentage" (*id.*). Jaroch replied: "We are discussing with our IC, which has asked us to pause." (*id.*). On December 2, 2021, Newbury confirmed via email: "[W]e . . . no longer have approval to proceed with this transaction." (Compl. ¶41, Ex. 3, Nov. 4–16, 2021 Emails at 1). Banner Ridge alleges, on information and belief, that "Newbury's investment committee denied approval for reasons related to the underlying performance of the Asset" (Compl. ¶43).

Shortly after, Banner Ridge reached out to the two potential buyers who previously submitted an indication of interest to purchase the Asset to gauge their interest in the Asset. Neither potential buyer expressed a clear interest in proceeding at that time, and no agreement was reached (Compl. ¶46).

According to Banner Ridge, the market value of the Asset has declined since Newbury's alleged breach of contract. Banner Ridge also alleges that it has incurred significant fees (including legal fees) in reliance upon Newbury's contractual promises, and it has incurred (and will continue to incur) litigation costs to remedy Newbury's misconduct, as well as costs associated with deal remarketing (Compl. ¶47).

As noted above, Newbury moves to dismiss Banner Ridge's claims on the ground that the parties never reached a binding agreement with respect to the sale of Newbury's Asset.

DISCUSSION

"On a CPLR 3211 motion, the court must 'accept the facts as alleged in the complaint as true, accord plaintiffs the benefit of every possible favorable inference, and determine only whether the facts as alleged fit within any cognizable legal theory'" (*DKR Soundshore Oasis Holding Fund Ltd. v Merrill Lynch Int'l*, 80 AD3d 448, 449 [1st Dept 2011], quoting *Leon v Martinez*, 84 NY2d 83, 87-88 [1994]). "[H]owever, 'allegations consisting of bare legal conclusions as well as factual claims flatly contradicted by documentary evidence are not entitled to any such consideration'" (*Myers v Schneiderman*, 30 NY3d 1, 11 [2017] [citations omitted]).

A motion to dismiss under CPLR 3211(a)(1) on the basis of documentary evidence outside the Complaint "may be granted 'only where the documentary evidence utterly refutes [the complaint's] factual allegations, conclusively establishing a defense as a matter of law'" (*id.* at 449-50 [alteration in original], quoting *Goshen v Mut. Life Ins. Co. of NY*, 98 NY2d 314, 326 [2002]).

I. Count I – Breach of the LOI

"[I]f the parties to an agreement do not intend it to be binding upon them until it is reduced to writing and signed by both of them, they are not bound and may not be held liable until it has been written out and signed" (*Scheck v Francis*, 26 NY2d 466, 469–70 [1970]). "Certainly, 'when a party gives forthright, reasonable signals that it means to be bound only by a written agreement, courts should not frustrate that intent'" (*Stonehill Capital Mgt., LLC v Bank of the W.*, 28 NY3d 439, 451 [2016] [quoting *R.G. Group, Inc. v Horn & Hardart Co.*, 751 F2d 69, 75 [2d Cir 1984] [applying New York contract law]). "With respect to auctions, the general rule is that a seller's acceptance of an auction bid forms a binding contract, unless the bid is contingent on future conduct" (*id.* at 449).

"In determining whether the parties entered into a contractual agreement and what were its terms, it is necessary to look, rather, to the objective manifestations of the intent of the parties as gathered by their expressed words and deeds" (*Brown Bros. Elec. Contractors, Inc. v Beam Const. Corp.*, 41 NY2d 397, 399 [1977]). "In doing so, disproportionate emphasis is not to be put on any single act, phrase or other expression, but, instead, on the totality of all of these, given the attendant circumstances, the situation of the parties, and the objectives they were striving to attain" (*Brown Bros. Elec. Contractors, Inc. v Beam Const. Corp.*, 41 NY2d 397, 399–400 [1977]).

Here, the LOI and the parties' communications demonstrate that the LOI was not a binding agreement for the sale of the Asset. The LOI described a proposed transaction but required only that (i) "[t]he parties ***shall seek*** *to* execute a Definitive Purchase Agreement," and (ii) "[t]he parties ***shall use all reasonable efforts*** to execute the Definitive Agreement on or before November 15, 2021 and close on or before December 31, 2021. Thus, "the letter of intent

expresses the parties' intention to enter into a contract 'at a later date' and nowhere states that they intend to be legally bound until such future agreement is reached" (*Aksman*, 21 AD3d at 261). Further, the LOI states that "[t]he closing would be ***subject to***…(ii) Satisfaction of the conditions specified in the Definitive Agreement." While the language "subject to" is not by itself dispositive (*see Claim Recovery Group LLC v Markel Corp.*, 2023 NY Slip Op 00371, 1 [1st Dept Jan. 26, 2023]), in this instance the language indicates that reaching a Definitive Agreement was a condition precedent (*E. Consol. Properties, Inc. v Morrie Golick Living Tr.*, 83 AD3d 534 [1st Dept 2011]; *Prospect St. Ventures I, LLC v Powercenter Sys., Inc.* [Sup Ct, NY County 2005], *affd* 23 AD3d 213, 213 [1st Dept 2005]).

Further, the email exchange on October 22, 2021 between Newbury and Melting Point (on Banner Ridge's behalf) confirmed that Newbury's offer was conditioned on negotiating a Definitive Agreement. Melting Point noted: "I just got off the phone with the seller's internal counsel who is reviewing the LOI, and they wanted to just verify that the bid is IC approved and no further approvals are needed. Can you verify this?" (Compl. ¶25, Ex. 2, Oct. 22, 2021 Emails). Jaroch responded: "We are ready to proceed at this price, subject to legal due diligence, getting an agreeable form of PSA, etc." (*id.*). Thus, Newbury again reiterated that any agreement was subject to the PSA. Importantly, this exchange occurred *before* Banner Ridge countersigned the LOI (Compl ¶ 27).

Stonehill Capital Mgt., LLC v Bank of the W. (28 NY3d 439, 449 [2016]), upon which Banner Ridge relies, is distinguishable. Unlike the present case, *Stonehill* involved a "competitive online sealed-bid auction" (*id.* at 443), the express terms of which required "that the bids were non-contingent final offers that, if accepted by the seller, required execution by the bidder of a pre-negotiated asset sale agreement and an accompanying 10% deposit" (*id.* at 449).

Although the auction seller in *Stonehill* purported to accept the plaintiff buyer's winning unconditional bid "[s]ubject to mutual execution of an acceptable [loan sale agreement]," the Court found based on the totality of the circumstances that the seller – which set the terms of the auction – could not thereafter disclaim that there was a binding agreement to proceed with the transaction. The Court particularly stressed the explicit ground rules for the auction, noting that "[t]o adopt [seller's] argument would mean that the auction was neither final nor binding – in direct contravention of the auction sale terms and the usual manner in which reserve auctions proceed" (*id.* at 452). Accordingly, the Court found that the seller's requirement "that the sale be completed upon the execution of a signed writing and the tender of the 10% deposit" were simply "post-agreement requirements the parties were obliged to perform pursuant to an existing agreement" (*id.* at 453).

By contrast, this case does not involve a seller seeking to evade the express terms it dictated for its own auction, which included that the bids be non-contingent. Instead, the conditionality of Newbury's LOI was baked into the transaction from the outset, and it was explicitly confirmed to Banner Ridge before it counter-signed the document. And unlike the bid in *Stonehill*, Newbury's LOI did not contain an affirmative statement of an intent to be bound (*see also Claim Recovery Group*, 2023 NY Slip Op 00371, 1 ["The term sheet unambiguously provides that '[t]he Parties intend to be legally bound to this transaction once this Term Sheet is mutually executed.'"]), but rather only stated that upon signing, the *LOI* would become "effective." The parties' focus then shifted, consistent with the LOI, to negotiating a Definitive Agreement, which is the subject of Banner Ridge's second claim for relief (discussed below).

Defendant's motion to dismiss the First Cause of Action is granted.

II. Count II – Breach of the Purported November 15, 2021 Agreement

"To establish the existence of an enforceable agreement, a plaintiff must establish an offer, acceptance of the offer, consideration, mutual assent, and an intent to be bound" (*Ostojic v Life Med. Tech., Inc.*, 201 AD3d 522, 523 [1st Dept 2022]). Here, the main dispute between the parties is whether there was an intent to be bound based on communications between counsel during negotiation of the PSA. It is well established that "[p]rovided there is objective evidence establishing that the parties intended to be bound, an agreement need not be signed to be enforceable, unless the parties have agreed that their contract will not be binding until executed by both sides" (*id.*, citing *Kowalchuk v Stroup*, 61 AD3d 118, 121-25 [1st Dept 2009]). Here, the parties' communications and the text of the Draft PSA make clear that the parties did not intend to be bound unless a final agreement were signed.

First, Banner Ridge repeatedly sought Newbury's signature on the Draft PSA *(see* NYSCEF 18 at 1 [Goldstein Affirm, Ex. E] ["…we can get comfortable with your positions on the rest and ***move to signing***…."]; Compl., Ex. 3 at 6 ["It would be great to get the PSAs finalized and ***signed up today***…."]; *id.* at 1 ["We were ***hoping to exchange pages today***…."] [emphasis added]). Crucially, when counsel for Banner Ridge emailed counsel for Newbury a "proposed execution version" of the Draft PSA, he included a cover email with explicit instructions to "[p]lease confirm if [Newbury is] signed off and ***we can exchange signatures tomorrow***." (*id.* at 2 [emphasis added]). In response, Chris Jaroch, partner at Newbury, replied, "Thank you – we are evaluating." (*id.*)

This is similar to the scenario that arose in *Scheck v Francis* (26 NY2d 466, 469 [1970]), where in granting the defendant's motion to dismiss, the Court of Appeals found that counsel's request, in a cover letter, to "sign" and "have [the counterparty] sign all copies" of an attached

agreement made it "clear, from [counsel's] letter alone, that the agreements were to take effect only after both parties had signed them" and thus plaintiff did not establish an intent to be bound (*id.* at 470; *see also Longo v Shore & Reich*, 25 F3d 94, 97 [2d Cir 1994]) [no binding contract because counsel's cover letter with request to "sign" attached agreement "evidenced an intent that the parties would not be bound to the terms of their negotiations until the agreement was signed"]).

Second, Banner Ridge's counsel's repeated characterizations of the Draft PSA as a "proposed execution version," (Compl., Ex. 3 at 2 ["I've attached a ***proposed*** execution version of the…PSA."] [emphasis added]), indicate that counsel "had considered unexecuted versions of the agreement to be nothing more than drafts or proposals and not, as [Banner Ridge] later [claimed], final binding agreements" (*Winston v Mediafare Entertainment Corp.*, 777 F2d 78, 81 [2d Cir 1985] [applying New York law]; see also *Kowalchuk*, 61 AD3d at 123 [discussing *Winston* and stating that "[i]t was particularly significant that counsel's correspondence repeatedly used the term[]…'***proposed agreement***"] [emphasis added]). Moreover, Plaintiffs' claim that Banner Ridge "already understood" Newbury to be "signed off" on the Draft PSA on November 15 is belied by the very email Plaintiffs cite, in which their own counsel asks Newbury to "confirm ***if*** you are signed off" and solicits both parties' signature (Compl., Ex. 3 at 2 [emphasis added]).

Third, the draft PSA (which purportedly constitutes the "agreement") itself provided that "[t]his Agreement has been…duly authorized, executed and delivered by it, and this Agreement constitutes . . . its valid and binding obligation" (Compl., Ex. 5 at §§ 5.1; 6.1). As the Second Circuit held in *Reprosystem, B.V. v SCM Corp.* (727 F2d 257, 262 [2d Cir 1984]), similar language indicated that the parties conditioned their obligations "on execution of a formal

agreement." (*id.* at 260, 262 [applying New York law and holding "no contract existed" where unsigned agreement stated that the "Agreements have been duly authorized, executed, and delivered"]). While the presence of this type of contractual language is not dispositive on its own, it does further demonstrate the parties' intent not to be bound by a contractual obligation until the PSA was duly authorized and executed (*see also 184 Joralemon LLC v Brooklyn L. Sch.*, 2011 WL 1121948, at *3 [Sup Ct, King's County 2011] [dismissing breach of contract claim where "Agreement evinces the parties' clear intent not to be bound until the execution of the Agreement by both parties"]).

In sum, the November 15 correspondence was simply part of an extended back and forth between counsel, a process that did not include any definitive statement by either side binding their respective clients prior to signature. Banner Ridge's attempt to elevate that exchange of drafts into a binding agreement is unavailing. Accordingly, Defendant's motion to dismiss the Second Cause of Action is granted.[1]

III. Count III – Promissory Estoppel

Finally, Plaintiff's promissory estoppel claim is dismissed. Promissory estoppel requires three elements: "(i) a sufficiently clear and unambiguous promise; (ii) reasonable reliance on the

[1] A number of the cases upon which Banner Ridge relies are distinguishable because they involved partial performance by plaintiff (*see e.g.*, *Aristone Realty Capital, LLC v 9 E. 16th St. LLC*, 94 AD3d 519 [1st Dept 2012] ["In response to the offer e-mail, purchaser's counsel exchanged a signature page executed by his client and purchaser tendered payment of the deposit. Under these circumstances, triable issues of fact exist as to the viability of plaintiff's claim for specific performance, despite the lack of a fully executed contract"]; *Lord v Marilyn Model Mgt., Inc.*, 173 AD3d 606, 607 [1st Dept 2019] [denying motion to dismiss where "[a]lthough defendant never signed the agreement, plaintiff nonetheless began working for defendant on September 1, 2015, and both sides proceeded to perform their obligations under the agreement"]). Here, there is no allegation that Plaintiff partially performed under the contract.

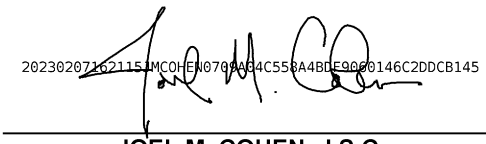
promise; and (iii) injury caused by the reliance" (*Castellotti v Free*, 138 AD3d 198, 204 [1st Dept 2016]).

Here, Newbury's expressly conditional promise "to proceed at this price, *subject to legal due diligence, getting an agreeable form of PSA*, etc." [emphasis added] was not a clear and unambiguous promise to proceed with the transaction. It is, therefore, insufficient to support a claim for promissory estoppel. In *Chem. Bank v City of Jamestown* (122 AD2d 530, 530 [4th Dept 1986]), the court dismissed a promissory estoppel claim where—even though defendants had "indicate[d] that a closing [of the transaction] was anticipated"—the parties' correspondence nevertheless "made clear … that a closing would not take place until" the satisfaction of further criteria, including the "execution of the final documents" (*see also Beekman Inv. Partners, L.P. v Alene Candles, Inc.*, 2006 WL 330323, at *8 [SDNY 2006] ["[T]he due diligence performed by [plaintiff] was explicitly made a condition precedent to the execution of the contract that would have provided for the reimbursement of these expenses. Under New York law, this precludes detrimental reliance as a matter of law."]). The same applies here.

Accordingly, it is

ORDERED that defendant Newbury Partners LLC's motion to dismiss the complaint is **GRANTED** and the complaint is dismissed with prejudice, with costs and disbursements to defendant as taxed by the Clerk of the Court, and the Clerk is directed to enter judgment accordingly in favor of defendant.

This constitutes the decision and order of the Court.



2/7/2023
DATE

JOEL M. COHEN, J.S.C.

CHECK ONE:	X	CASE DISPOSED		NON-FINAL DISPOSITION			
	X	GRANTED		DENIED		GRANTED IN PART		OTHER
APPLICATION:		SETTLE ORDER		SUBMIT ORDER			
CHECK IF APPROPRIATE:		INCLUDES TRANSFER/REASSIGN		FIDUCIARY APPOINTMENT		REFERENCE	