SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK: COMMERCIAL DIVISION PART 48

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PATRICK CALDWELL, SAMUEL CARNER, HAYLEY GOLDENBERG, BEN GREINER, CANAAN HARRIS, NIA JOY HARVEY, JULIA KOYFMAN, ALEX NGO, DUSTY SANDERS, and LILLIA WOODBURY,

Plaintiffs,

- v -

MICHAEL MINARIK,

Defendant.

INDEX NO. 653763/2022

MOTION DATE N/A

MOTION SEQ. NO. 002

DECISION + ORDER ON MOTION

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HON. ANDREA MASLEY:

The following e-filed documents, listed by NYSCEF document number (Motion 002) 27, 28, 29, 30, 31, 32, 33, 34, 38

were read on this motion to/for DISMISS.

For the reasons stated on the record on December 22, 2023, the motion to dismiss is granted.

Plaintiffs are students and an instructor who filed this action objecting to the cancellation of a two-year musical theater writing curriculum entitled the Creators' Program (Program) at the Institute for American Musical Theatre, LLC (IAMT). (NYSCEF Doc No. [NYSCEF] 7, Complaint ¶¶1-2, 5.) In a number of related actions, Minarik and nonparty Andrew Drost are fighting over control of IAMT.[1]

Minarik moves for dismissal of the complaint in its entirety pursuant to CPLR 3211(a) but specifies only CPLR 3211(a)(10), which is addressed below. Minarik's

[1] The related actions are (1) *Minarik v Drost*, Sup Ct, NY County, Index No. 654416/2022; (2) *Drost v Minarik*, Sup Ct, NY County, Index No. 653929/2022; and (3) *Drost v Institute for American Musical Theatre, LLC*, Sup Ct, NY County, Index No. 650671/2023, in which one of plaintiffs is Conard Drost, Andrew Drost's father.

motion appears to challenge plaintiffs' failure to state a claim. On a motion to dismiss pursuant to CPLR 3211(a)(7), 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." (*Leon v Martinez*, 84 NY2d 83, 87-88 [1994] [citation omitted].) "[B]are legal conclusions, as well as factual claims which are either inherently incredible or flatly contradicted by documentary evidence" cannot survive a motion to dismiss. (*Summit Solomon & Feldesman v Lacher*, 212 AD2d 487, 487 [1st Dept 1995] [citation omitted].)

Minarik supplies documents which may or may not be the documents on which plaintiffs rely. To prevail on a CPLR 3211(a)(1) motion to dismiss, "the defendant has the burden of showing that the relied-upon documentary evidence 'resolves all factual issues as a matter of law, and conclusively disposes of the plaintiff's claim.'" (*Fortis Fin. Servs. v Filmat Futures USA*, 290 AD2d 383, 383 [1st Dept 2002] [citation omitted].) "A cause of action may be dismissed under CPLR 3211(a)(1) 'only where the documentary evidence utterly refutes [the] plaintiff's factual allegations, conclusively establishing a defense as a matter of law.'" (*Art and Fashion Group Corp. v Cyclops Prod., Inc.*, 120 AD3d 436, 438 [1st Dept 2014] [citation omitted].) "The documents submitted must be explicit and unambiguous." (*Dixon v 105 West 75th St. LLC*, 148 AD3d 623, 626 [1st Dept 2017] [citation omitted].) Their content must be "'essentially undeniable.'" (*VXI Lux Holdco S.A.R.L. v SIC Holdings, LLC*, 171 AD3d 189, 193 [1st Dept 2019] [citation omitted].) The authenticity of documentary evidence must not be subject to genuine dispute, and it must be enough to "'support the ground on which the motion is based.'"

(*Amsterdam Hosp. Group., LLC v Marshall-Alan Assocs., Inc.*, 120 AD3d 431, 432 [1st Dept 2014] [citation omitted].)

In addition to a general failure to properly oppose the motion[2] and plaintiffs' confusion as to the applicable standard, the fifteen causes of action are dismissed for the following reasons:

Plaintiffs allege that on December 28, 2021, Minarik informed plaintiff Samuel Carner that the Program was terminated. (*See* NYSCEF 7, Complaint ¶39.) This action was filed on October 12, 2022. (NYSCEF 1, Summons with Notice.) To the extent that plaintiffs challenge IAMT's decision to terminate an educational program, the court is compelled to dismiss the complaint because such a challenge to academic and administrative decisions is barred by a four-month statute of limitations applicable to CPLR article 78 proceedings. (*See Padiyar v Albert Einstein Coll. of Medicine of Yeshiva Univ.*, 73 AD3d 634, 635 [1st Dept 2010], *lv denied* 15 NY3d 708 [2010]; *Gary v NYU*, 48 AD3d 235, 236 [1st Dept 2008].) Accordingly, the first, second, fifth, sixth, seventh, eighth, and tenth causes of action are dismissed with prejudice.

Plaintiffs allege all fifteen causes of action against Minarik. However, Minarik is a disclosed agent of IAMT, who "could not be held liable absent affirmative negligence on [his] part." (*Makhnevich v Bd. of Managers of 2900 Ocean Condominium*, 217 AD3d 630, 632 [1st Dept 2023] [citations omitted], *appeal dismissed* 40 NY3d 1015 [2023].) Contrary to plaintiffs' repeated assertions, without legal authority, this principle does not

[2] Should plaintiffs file an amended complaint, they shall comply with the Uniform Rules for Trial Courts (22 NYCRR) and in particular rule 202.8 (c), Rules of the Commercial Division of the Supreme Court (22 NYCRR 202.70 [g]), and Part 48 Procedures. Plaintiffs shall also properly file motion papers by designating their sequence numbers and properly labeling documents filed in NYSCEF.

change merely because Minarik is a partial owner of IAMT. (*Kahan Jewelry Corp. v Coin Dealer of 47th St. Inc.*, 173 AD3d 568, 569 [1st Dept 2019] ["The mere fact that Yusupov is the sole shareholder of Coin Dealer 47 is not sufficient to pierce the corporate veil as to this defendant" (citation omitted)].)

Moreover, plaintiffs fail to assert the necessary elements for piercing the corporate veil. "The doctrine of piercing the corporate veil is typically employed by a third party seeking to go behind the corporate existence in order to circumvent the limited liability of the owners and to hold them liable for some underlying corporate obligation.... The concept is equitable in nature." (*Matter of Morris v New York State Dept. of Taxation and Fin.*, 82 NY2d 135, 140-41 [1993] [citations and footnote omitted].) "[H]istorically, incorporation is designed to limit liability of owners of the corporation – not to limit a corporation's liability for acts of its officers; the whole concept of 'piercing' involves going beyond the corporate form to reach the normally insulated-from-liability owners rather than, ... pursuing the corporation itself for claims or judgments against its officers." (*State v Easton*, 169 Misc2d 282, 289 [Sup Ct, Albany County 1995] [citations and emphasis omitted].)

"When a corporation has been so dominated by an individual or another corporation and its separate entity so ignored that it primarily transacts the dominator's business instead of its own and can be called the other's alter ego, the corporate form may be disregarded to achieve an equitable result." (*Austin Powder Co. v McCullough*, 216 AD2d 825, 827 [3d Dept 1995] [citations omitted].) "To make out a cause of action for liability on the theory of piercing the corporate veil because the corporation at issue is the defendant's alter ego, the complaining party must, above all, establish that the

owners of the entity, through their domination of it, abused the privilege of doing business in the corporate form to perpetrate a wrong or injustice against the party asserting the claim such that a court in equity will intervene." (*Tap Holdings, LLC v Orix Fin. Corp.*, 109 AD3d 167, 174 [1st Dept 2013] [citation omitted].) The indicia of veil-piercing include:

> "(1) the absence of the formalities and paraphernalia that are part and parcel of the corporate existence, *i.e.*, issuance of stock, election of directors, keeping of corporate records and the like, (2) inadequate capitalization, (3) whether funds are put in and taken out of the corporation for personal rather than corporate purposes, (4) overlap in ownership, officers, directors, and personnel, (5) common office space, address and telephone numbers of corporate entities, (6) the amount of business discretion displayed by the allegedly dominated corporation, (7) whether the related corporations deal with the dominated corporation at arms length, (8) whether the corporations are treated as independent profit centers, (9) the payment or guarantee of debts of the dominated corporation by other corporations in the group, and (10) whether the corporation in question had property that was used by other of the corporations as if it were its own." (*Wm. Passalacqua Bldrs. v Resnick Devs. S., Inc.*, 933 F2d 131, 139 [2d Cir 1991] [citations omitted].)

"[A] simple breach of contract, without more, does not constitute a fraud or wrong warranting the piercing of the corporate veil." (*Bonacasa Realty Co., LLC v Salvatore*, 109 AD3d 946, 947 [2d Dept 2013] [citation omitted].) Plaintiffs repeated reliance on piercing the corporate veil to reach Minarik is rejected.

Many of the causes of action involve Carner's employment. On this record, Carner is an employee-at-will. "Absent an agreement establishing a fixed duration, an employment relationship is presumed to be a hiring at will, terminable at any time by either party." (*Matter of De Petris v Union Settlement Assn.*, 86 NY2d 406, 410 [1995] [citation omitted].) Carner has offered the court no such agreement. The court is compelled to dismiss Carner's claims for this reason.

The student plaintiffs, in the first cause of action,[3] and instructor plaintiff Carner, in the second cause of action, allege "reliance and detrimental reliance." The students allege that they "turned down other programs, left employment, moved to New York City (some even entering into new leases), and, in general, uprooted their lives at a young and vulnerable age, all in expectation of the promised Certificate, two-years' worth of instruction." (NYSCEF 7, Complaint ¶53.) Carner alleges that he "relied to his detriment that he would be paid for the initial two-year Program set up for the first round of students, the so-called 'Class of "23"' who would commence the two-year Curriculum on the Fall of 2021." (*Id.* ¶67.) "The elements of a claim for promissory estoppel are: (1) a promise that is sufficiently clear and unambiguous; (2) reasonable reliance on the promise by a party; and (3) injury caused by the reliance." (*MatlinPatterson ATA Holdings LLC v Fed. Express Corp.*, 87 AD3d 836, 841-42 [1st Dept 2011] [citations omitted], *lv denied* 21 NY3d 853 [2013].)

Plaintiffs' promissory estoppel claims are precluded by the alleged contracts. (*See Bent v St. John's Univ., New York*, 189 AD3d 973, 975 [2d Dept 2020], *lv denied* 38 NY3d 904 [2022].) Carner's employment claim is also dismissed because "a change of job or residence, by itself, is insufficient to trigger invocation of the promissory estoppel doctrine." (*Cunnison v Richardson Greenshields Sec. Inc.*, 107 AD2d 50, 53 [1st Dept 1985] [citations omitted]; *see also Dalton v Union Bank of Switzerland*, 134 AD2d 174, 176 [1st Dept 1987] ["fact that defendant promised plaintiff employment at certain salary with certain other benefits, which induced him to leave his former job

[3] In their opposition, plaintiffs withdraw the first cause of action. Equitable estoppel is asserted on behalf of Carner only. (NYSCEF 35, Affidavit in Opposition ¶23.)

and forego possibility of other employment in order to remain with defendant, does not create cause of action for promissory estoppel" (citations omitted)].)

Plaintiffs allege two causes of action for breach of contract. (NYSCEF 7, Complaint ¶¶79, 89.) In the third cause of action, the student plaintiffs allege breach of the "Student Agreement." Contrary to the complaint (*id*. ¶40), the Student Agreement is not attached as Exhibit B. In opposition, plaintiffs proffer a document entitled "Tuition Financing Agreement." (NYSCEF 36, Student Agreement.) It is not signed by any party to this action.

Carner's fourth cause of action for breach of the "Director Agreement" is dismissed because it is unclear what agreement was breached. The fourth cause of action is entitled "Material Breach of Director Agreement," but the Director Agreement is not otherwise mentioned in the complaint. Rather, the body of the fourth cause of action references a "Program Agreement" which is not annexed as Exhibit A to the complaint, as stated. (NYSCEF 7, Complaint ¶19.) Plaintiffs allege that IAMT, not Minarik, is Carner's employer. (*Id*. ¶¶2, 93, 138.) Minarik is not a signatory to either agreement and, as discussed above, plaintiffs' allegations are insufficient for piercing. To the extent plaintiffs allege an agreement to continue the program for two years, the claim fails for violation of the statute of frauds which requires such promises to be in writing. (*See Cron v. Hargro Fabrics, Inc*., 91 NY2d 362, 366 [1998] [where defendant moves to dismiss for violation of the statute of frauds, plaintiff's failure to proffer an agreement in opposition to defendant's CPLR 3211 motion warrants a "presum[ption] that the alleged agreement was never reduced to a writing subscribed by defendant"].)

In addition, Minarik moves pursuant to CPLR 3211(a)(10) for dismissal of the contract claims (third and fourth causes of action) arguing that IAMT and Drost are the alleged contract counterparties, not Minarik, making them necessary parties here. CPLR 1001(a) provides that necessary parties are "[p]ersons who ought to be parties if complete relief is to be accorded between the persons who are parties to the action or who might be inequitably affected by a judgment in the action." The court agrees that Drost and IAMT are necessary parties. (*See Galbraith v Guida*, 161 AD2d 206, 207 [1st Dept 1990].)

Carner's fifth cause of action for "unlawful termination" is dismissed. In addition to the reasons given for dismissing the fourth cause of action, plaintiffs contradict this claim by alleging that Carner was never terminated. (NYSCEF 7, Complaint ¶96.) Likewise, the time period for which Carner was not paid is unclear: hours (*id*. ¶46), weeks (*id*. ¶95) or years. (*Id*. ¶45.)

Within the fifth cause of action, plaintiffs allege discrimination in violation of Administrative Code of the City of New York §8-107(7). Plaintiffs' allegations are woefully insufficient. CPLR 3013 requires factual allegations of "the transactions, occurrences, or series of transactions or occurrences, intended to be proved, and the material elements of each cause of action or defense."

The sixth cause of action for fraud is dismissed for failure to comply with CPLR 3016(b). (*See Eurycleia Partners, LP v. Seward & Kissel, LLP*, 12 NY3d 553, 559 [2009].) Moreover, the fraud claim is duplicative of the contract claims.

The seventh cause of action for unjust enrichment is dismissed as duplicative of the contract claims. "To state a claim for unjust enrichment, a plaintiff must allege that:

'(1) the [defendant] was enriched, (2) at [plaintiff's] expense, and (3) that it is against equity and good conscience to permit the [defendant] to retain what is sought to be recovered.'" (*Schroeder v Pinterest Inc.*, 133 AD3d 12, 26 [1st Dept 2015], quoting *Georgia Malone & Co., Inc. v Rieder*, 19 NY3d 511, 516 [2012].) Plaintiff must have a relationship with the defendant that is not too attenuated and could have caused reliance or inducement. (*See Mandarin Trading Ltd. v Wildenstein*, 16 NY3d 173, 182 [2011] [citations omitted].)

The eighth cause of action is for "contract interference" because Minarik allegedly terminated the agreements between IAMT and plaintiffs. (NYSCEF 7, Complaint ¶113.) In the absence of a viable claim for breach of contract, this tortious interference with contract must fail. (*See Hermandad Y Asociados, Inc. v Movimiento Misionero Mundial, Inc.*, 22 Misc 3d 1138[A], 1138A, 2009 NY Slip Op 50500[U], *4 [Sup Ct, NY County 2009] ["to maintain [tortious interference with contract] claim, a plaintiff must properly allege that there was an actual breach of the contract"], citing *NBT Bancorp v Fleet/Norstar Fin. Group*, 87 NY2d 614, 620 [1996]; *see also Leki Aviation A/S v B/E Aerospace, Inc.*, 2013 NY Slip Op 31318[U], *17 [Sup Ct, NY County 2013] [dismissing tortious interference claim because plaintiff failed to state breach of contract claim].) Moreover, plaintiffs cannot avoid the statute of limitations problem by recasting their challenge to IAMT's education decision as one for tortious interference. (*Kickertz v New York Univ.*, 110 AD3d 268, 275 [1st Dept 2013].) Again, Minarik was acting on behalf of IAMT, and a business cannot tortiously interfere with its own contracts. (*See Manley v Pandick Press, Inc.*, 72 AD2d 452, 454 [1st Dept 1980], *appeal dismissed* 49 NY2d 981 [1980].)

The ninth cause of action is for defamation per se based on statements Minarik allegedly made about Carner. (NYSCEF 7, Complaint ¶116.) In its opposition, plaintiffs add that Sharon Kenny, IAMT's Music Director and accompanist, but not a party to this action, worked with the students in the Program and allegedly stated that the Program students "'were not talented writers,'" and that their cabaret presentation of work was "'terrible.'" (NYSCEF 35, Affirmation in Opposition ¶50.) Defamation is "the making of a false statement which tends to expose the plaintiff to public contempt, ridicule, aversion or disgrace, or induce an evil opinion of [plaintiff] in the minds of right-thinking persons, and to deprive [plaintiff] of their friendly intercourse in society." (*Foster v Churchill*, 87 NY2d 744, 751 [1996] [internal quotation marks and citation omitted].) "To prove a claim for defamation, a plaintiff must show: (1) a false statement that is (2) published to a third party (3) without privilege or authorization, and that (4) causes harm, unless the statement is one of the types of publications actionable regardless of harm." (*Stepanov v Dow Jones & Co., Inc.*, 120 AD3d 28, 34 [1st Dept 2014], [citation omitted].) First, plaintiffs' defamation claim fails for failure to allege time, place and the exact words. (*See Offor v Mercy Med. Ctr.*, 171 AD3d 502, 503 [1st Dept 2019].) Second, the statements are nonactionable opinion. For example, in a conversation between Minarik and Carner, Minarik allegedly said that the students "'hated'" the Program, that the Program students were "'entitled,'" and that the Program students were "'messy,' unclean, and 'disrespectful.'" (NYSCEF 7, Complaint ¶¶32-34.) Plaintiffs' defamation claims, based on statements made to Carner, must be dismissed as publication requires communications to a third party outside of IAMT. (*Bondalapati v Columbia Univ.*, 170 AD3d 489, 490 [1st Dept 2019].) A qualified immunity applies in employment

settings which also precludes this claim. (*See Porges v Weitz*, 205 AD3d 13, 18 [2d Dept 2022].) Finally, the at-will doctrine cannot be repled as defamation or any other claim such as fraud, or tortious interference for that matter, to avoid the restrictions on employment at will. (See *Winiarski v Butler*, 200 AD3d 630, 631 [1st Dept 2021] ["discharged employees cannot 'subvert the traditional at-will contract rule by casting their cause of action in terms of another tort'"], *lv denied,* 38 NY3d 913 [2022].)

In the tenth cause of action, entitled discrimination, plaintiff alleges the violation of Administrative Code §8-107(4). (NYSCEF 7, Complaint ¶128.) However, the allegations are woefully vague as to the circumstances and any adverse action taken. (*See Lewkowicz v. Terence Cardinal Cook Health Ctr.*, 212 AD3d 443, 444 [1st Dept 2023] [plaintiff did not state discrimination claim under Administrative Code §8-107(4) as he failed to "set forth any factual allegations showing that he was terminated under circumstances that gave rise to an inference of discrimination" (citations omitted)], *lv denied* 39 NY3d 914 [2023].)

The eleventh cause of action is for violation of the New York Debtor and Creditor Law. To state a claim for violation of Debtor and Creditor Law §§ 273 & 274, the plaintiff must establish that the defendant (1) made a conveyance; (2) without fair consideration; (3) while insolvent or becoming insolvent as a consequence of the transfer. (*See Zanani v Meisels,* 78 AD3d 823, 824 [2d Dept 2010].) Plaintiffs allege "[d]efendant Michael Minarik, with intent to defraud creditors, and with the particular intent to defraud Plaintiffs in the collection of any judgment arising out of Plaintiff's claims herein transferred, paid distributed, and/or conveyed the assets of IAMT to himself." (NYSCEF 7, Complaint ¶133.) Plaintiffs fail to explain how Minarik knew

about this action before it was filed during which time he allegedly rendered IAMT insolvent. (*See 3 E. 54th St. New York, LLC v Patriarch Partners*, LLC, 90 AD3d 418, 419 [1st Dept 2011].) This claim is dismissed as plaintiffs' claim is conclusory and not supported by any facts. Plaintiffs fail to allege insolvency, that property was transferred while insolvent or that a transfer rendered IAMT insolvent. Finally, the claim must be dismissed as it is alleged "upon information and belief" without disclosing the source of the belief. (*Carlyle, LLC v Quik Park 1633 Garage LLC*, 160 AD3d 476, 477 [1st Dept 2018].)

Carner's twelfth cause of action is for violation of Labor Law §193 because IMAT allegedly failed to pay Carner for two years. (NYSCEF 7, Complaint ¶45.) Carner fails to identify the authority for paying him for preparatory work. (*Id*. ¶46.) To the extent that Carner alleges a violation of Labor Law §193(1)(b), he fails to allege an improper deduction.

The student plaintiffs' thirteenth cause of action is for violation of the Freelance Isn't Free act. Administrative Code §20-930 requires allegations that a hiring party "threaten, intimidate, discipline, harass, deny a work opportunity to or discriminate against a freelance worker, or take any other action that penalizes a freelance worker for, or is reasonably likely to deter a freelancer worker from, exercising or attempting to exercise any right guaranteed under this chapter, or from obtaining future work opportunity because the freelance worker has done so." Again, plaintiffs' complaint is impermissibly vague.

Carner's fourteenth cause of action is for infringement, misappropriation and conversion. Plaintiffs assert that Minarik "brought Mr. Carner's Curriculum to New York

University so that he might gain the benefit of partnership opportunities in consideration therefor, and otherwise exploit Mr. Carner's protectable intellectual property, thereby willfully riding on the back of the efforts of others and using Mr. Carner's protectable intellectual property and expression to do so." (NYSCEF 7, Complaint ¶149.) However, the claim is silent as to how the information is proprietary or protected in any way. (*See CIP GP 2018, LLC v Koplewicz*, 194 AD3d 639, 640 [1st Dept 2021].) Carner fails to delineate how the Program he allegedly created for IAMT belongs to him and not IAMT. (*See Colgate Inn, LLC v Eberhardt*, LLC, 206 AD3d 1197, 1203 [3d Dept 2022] [employer cannot misappropriate information it already owns].)

The fourteenth cause of action for conversion is dismissed. "[C]onversion takes place when someone, intentionally and without authority, assumes or exercises control over personal property belonging to someone else, interfering with that person's right of possession.... Two key elements of conversion are (1) plaintiff's possessory right or interest in the property ... and (2) defendant's dominion over the property or interference with it, in derogation of plaintiff's rights." (*Colavito v New York Organ Donor Network, Inc.*, 8 NY3d 43, 49-50 [2006] [citations omitted].) "[C]onversion is concerned with [plaintiff's] superior right of possession of such property, not title ownership." (*Core Dev. Grp. LLC v Spaho*, 199 AD3d 447 [1st Dept 2021] [citation omitted].) Plaintiffs fail to allege interference with or exclusion from their property.

The fifteenth cause of action is for an implied contract violation. First, plaintiffs allege this claim on behalf of those students who did not have written contracts with IAMT. (NYSCEF 7, Complaint ¶154.) Second, implicitly on behalf of all students, plaintiffs object to IAMT's pivot to virtual classes during COVID. (*Id.* ¶21.) Plaintiffs also

object to IAMT's a-la-carte program for one semester during COVID, when the students anticipate a 2-year program ending with a certificate. (*Id*. ¶152.) As to Carner, plaintiffs allege that the syllabus he created was his "protectable expression" which he created for a 2-year program. (*Id*. ¶151.) This claim is rejected as vague and precluded by contract to the extent plaintiffs have alleged contracts. (*See W. End Interiors, Ltd. v Aim Const. & Contr. Corp*., 286 AD2d 250, 252 [1st Dept 2001].) Plaintiffs' attempt to remedy this deficiency by claiming that Minarik gave them an "implied warranty" that they "could count on his vision, experience and stewardship in making the decision to turn down other programs and instead choose one under his auspices" is not helpful. (NYSCEF 35, Opposition Affirmation ¶75.) Plaintiffs identify no words or actions which would constitute such an "implied warranty," and fail to mention consideration for such a promise.

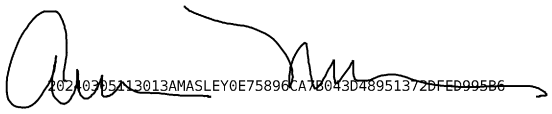
ORDERED that defendant's motion to dismiss is granted and the complaint is dismissed; and it is further

ORDERED that plaintiffs are granted leave to serve and file an amended complaint so as to replead twelfth, thirteenth, fourteenth, causes of action within 20 days after service on plaintiffs' attorney of a copy of this order with notice of entry; and it is further

ORDERED that, in the event that plaintiffs fail to serve and file an amended complaint in conformity herewith within such time, leave to replead shall be deemed denied, and the Clerk of the Court, upon service upon him of a copy of this order with notice of entry and an affirmation/affidavit by defendant's counsel attesting to such non-

compliance, is directed to enter judgment dismissing the action, with prejudice, and with costs and disbursements to the defendant as taxed by the Clerk; and it is further

ORDERED that such service upon the Clerk of the Court shall be made in accordance with the procedures set forth in the *Protocol on Courthouse and County Clerk Procedures for Electronically Filed Cases* (accessible at the "E-Filing" page on the court's website).



3/5/2024
DATE

ANDREA MASLEY, 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