

G.O.C. Invs. Co. Inc. v Bagbag

2025 NY Slip Op 31116(U)

March 31, 2025

Supreme Court, New York County

Docket Number: Index No. 650785/2024

Judge: Melissa A. Crane

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SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY

PRESENT: HON. MELISSA A. CRANE PART 60M

Justice

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INDEX NO. 650785/2024

G.O.C. INVESTMENTS COMPANY INC.,

MOTION DATE 04/01/2024

Plaintiff,

MOTION SEQ. NO. 001

- v -

BOAZ BAGBAG, BSD LEASING INC., BSD TREE INC., UGRT AUTOMOTIVE INC., UGRT ONE INC.

DECISION + ORDER ON MOTION

Defendant.

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The following e-filed documents, listed by NYSCEF document number (Motion 001) 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18

were read on this motion to/for DISMISSAL

In this action involving alleged malfeasance in connection with certain business ventures, defendants Boaz Bagbag ("Bagbag"), BSD Leasing Inc. ("BSD Leasing"), and BSD Tree Inc. ("BSD Tree") and nominal defendants UGRT Automotive Inc. ("UGRT Automotive") and UGRT One Inc. ("UGRT One") move, pursuant to CPLR 3211(a)(1) and CPLR 3211(a)(7), to dismiss the Complaint.

BACKGROUND

Plaintiff, G.O.C. Investments Company Inc., individually and derivatively in the right of and on behalf of UGRT Automotive Inc. and derivatively in the right of and on behalf of UGRT One Inc. ("G.O.C."), commenced this action seeking to recover damages from defendants for alleged malfeasance in connection with investments in certain business opportunities. G.O.C. essentially claims that Bagbag and two of his wholly owned companies, BSD Leasing and BSD Tree, fraudulently induced G.O.C. to invest millions of dollars to create two jointly owned companies, UGRT Automotive, a body shop company, and UGRT One, an automobile leasing

company. G.O.C. further claims that defendants improperly took funds belonging to, or contractually owed to, UGRT Automotive, URGT One, and G.O.C. and, in so doing, breached their fiduciary duties, aided and abetted breaches of fiduciary duty, committed fraud and conversion, and breached contractual agreements.

The Complaint (NYSCEF Doc. No. 1) includes the following factual allegations.

G.O.C., a Delaware corporation, is a 50% shareholder of UGRT Automotive, a New York body shop business, and a 50% shareholder of URGT One, a New York automobile leasing company. Bagbag is the sole shareholder of BSD Leasing and BSD Tree, both New York corporations. BSD Leasing is a 50% shareholder of URGT One.

UGRT Automotive

G.O.C. alleges that in 2022, Bagbag and representatives from G.O.C. had several discussions about potential business opportunities (*id.* ¶ 19). Specifically, G.O.C. alleges that in August 2022, Bagbag met several times with G.O.C. representatives Guy Yuval (“Yuval”) and Ori Arad (“Ori”), in New York, to discuss a potential joint business venture between G.O.C. and UGRT Automotive for a chain of body shops (*id.* ¶ 20 – 23). G.O.C. alleges that Bagbag stated that the joint venture would require an initial investment of \$600,000 from G.O.C. (*id.* ¶ 24). G.O.C. alleges that later in September 2022, Bagbag met with Yuval, Ori, and Karen Arad-Leibovitz, the director of G.O.C. in Tel Aviv, Israel, and presented a plan to establish the chain of body shops (*id.* ¶ 20 – 26). During these meetings, Bagbag allegedly presented himself as a serious businessman with broad knowledge and decades of business experience in both automobile lease services and body shop services, who would honestly and optimally manage any joint business venture with G.O.C. (*id.* ¶¶ 22, 27).

On November 7, 2022, BSD Leasing, G.O.C., and UGRT Automotive entered into a shareholders' agreement (the "Automotive Agreement") for UGRT Automotive, that had been formed "for the purpose of establishing and operating an automobile repair shop specializing in bodywork repairs and providing logistic services in the automobile field" (*id.* ¶¶ 30 – 31; NYSCEF Doc. No. 12 [Automotive Agreement]). The Automotive Agreement granted 66.6% ownership of UGRT Automotive to BSD Leasing and 33.3% ownership to G.O.C. Bagbag insisted that G.O.C. transfer the \$600,000 initial investment to BSD Tree's bank account because UGRT Automotive did not yet have a bank account. G.O.C. complied (Doc. No. 1 ¶ 32).

G.O.C. asserts that it relied on Bagbag's representations about his broad knowledge and extensive experience in the automobile leasing and body shop services when entering the Automotive Agreement and making the \$600,000 investment (*id.* ¶ 36). G.O.C. further asserts that Bagbag knew that the representations were false when he made them and that, in fact, Bagbag had almost no prior experience or knowledge in the body shop business (*id.* ¶ 37).

G.O.C. alleges that Bagbag and BSD Leasing subsequently approached G.O.C. with an opportunity for UGRT Automotive to purchase an existing automobile repair shop business, Manhattan Auto Car, Inc. ("Manhattan Auto"), for \$2,750,000 (*id.* ¶ 43). In a February 23, 2023 email, Bagbag and BSD Leasing reportedly represented to Karen and Ronan Zalayet ("Zalayet"), a representative of G.O.C., that Bagbag was making progress in the purchase of Manhattan Auto, and requested that G.O.C. contribute funds for the purchase of Manhattan Auto (*id.* ¶ 4). G.O.C. transferred to Bagbag \$175,000 toward its portion of the purchase price of Manhattan Auto (*id.* ¶ 45). On March 17, 2023, Bagbag sent Karen a purportedly fully executed copy of the purchase agreement for Manhattan Auto (the "Manhattan Auto Agreement") and requested that G.O.C. contribute the remainder of its portion of the purchase price (*id.* ¶ 51). G.O.C. sent the remainder

of its portion of the purchase price, \$1,200,000 on March 22, 2023 (*id.* ¶ 53). G.O.C. states that Bagbag and BSD Leasing agreed that G.O.C. would have the ability to monitor UGRT Automotive's bank account. The Manhattan Auto Agreement reportedly set the closing date for the purchase for April 3, 2023 (*id.* ¶ 52).

G.O.C. asserts that it transferred the funds for the Manhattan Auto purchase in reliance on the purportedly executed Manhattan Auto Agreement and the representations regarding Bagbag's extensive experience in the automobile leasing and body shop services (*id.* ¶ 55). However, the closing never took place (*id.* ¶ 57). G.O.C. alleges that its inquiries into the reason for the closing delays garnered changing responses from Bagbag and BSD Leasing (*id.* ¶ 59).

G.O.C. also asserts that on May 25, 2023, Bagbag sent Karen a draft stock purchase agreement for Manhattan Auto (*id.* ¶ 62). G.O.C. alleges that it was clear from the stock purchase agreement that the seller never executed the Manhattan Auto Agreement (*id.* ¶ 63). G.O.C. maintains that the purportedly executed Manhattan Auto Agreement was fraudulent, and that Bagbag and BSD Leasing knew that the agreement was fraudulent when they sent it to G.O.C. (*id.* ¶ 63 – 64).

G.O.C. asserts that it then requested copies of UGRT Automotive's bank statements to verify that the funds it sent were deposited in UGRT Automotive's bank account, but BSD Leasing and Bagbag never sent them (*id.* ¶ 65 – 66). G.O.C. requested the return of its share of the funds it transferred for the purchase of Manhattan Auto (*id.* ¶ 69). G.O.C. alleges that Bagbag asked for a few weeks to return the funds and later proposed repayment to G.O.C. in 24 monthly installments (*id.* ¶ 70 – 71). G.O.C. alleges that Bagbag and BSD Leading did not provide the bank account statements because the statements would reveal their malfeasance (*id.* ¶ 73). G.O.C. claims that BSD Leasing and Bagbag improperly removed \$1,375,000 from UGRT

Automotive's account, transferred some of the funds to BSD Leasing and BSD Tree, and used some of the funds to purchase vehicles for BSD Leasing's car leasing business (*id.* ¶ 75 – 80).

URGT One

G.O.C. alleges that during the initial 2022 joint business venture discussions between the parties, Bagbag also proposed the establishment of another jointly owned company between the parties, a business which would purchase cars and lease them to professional drivers in New York City (Complaint, ¶ 81). In January 2023, G.O.C. agreed to form and invest in UGR1 One, which G.O.C. and BSD Leasing would own jointly (*id.* ¶ 86). G.O.C. claims that Bagbag and BSD Leasing knowingly made false representations regarding the proposed companies in emails dated January 9, 2023 and January 26, 2023, and that it agreed to form and invest in UGR1 One with BSD Leasing based on those representations (*id.* ¶ 82 – 86).

G.O.C. entered into a shareholder's agreement with BSD Leasing and UGR1 One, dated January 31, 2022¹ (the "URGT One Shareholders Agreement"), that stated UGR1 One was formed "for the purpose of establishing and operating an automobile lease service and providing logistic services in the automobile field" (URGT One, Inc. Shareholder Agreement, NYSCEF Doc. No. 13). Under the terms of the UGR1 One Shareholders Agreement, BSD Leasing would hold 50% of the shares in UGR1 One and G.O.C. would hold the other 50% of the shares (Complaint, ¶ 89). In addition, G.O.C. would invest \$516,303 in UGR1 One (*id.*). The agreement also contained specific terms for the operation of UGR1 One (*id.*).

A purported February 6, 2023 addendum to the UGR1 One Shareholder Agreement ("URGT One Addendum") reportedly replaced BSD Leasing with BSD Tree as a shareholder in

¹ While the UGR1 One Shareholder Agreement is dated January 31, 2022, this date appears to be erroneous. In its Motion to Dismiss, Defendant argues that plaintiff's date is incorrect, and the agreement was not actually signed in January of 2022, as plaintiff's complaint alleges that it agreed to form UGR1 One in January 2023.

URGT One, and contained additional terms for the operation of URG T One (*id.* ¶ 90)². The URG T One Addendum also reportedly provided that the G.O.C payment of \$516,303 should be made to BSD Tree's bank account, as URG T One did not yet have a bank account (*id.* ¶ 91). G.O.C. alleges that in executing the documents and making the \$516,303 payment, it relied on the terms of the URG T One Shareholder Agreement and URG T One Addendum (*id.* ¶ 96 – 97).

G.O.C. claims that subsequently, in a April 18, 2023 meeting, Bagbag and BSD Tree provided G.O.C., particularly Zalayet, with inflated revenue figures for URG T One and urged G.O.C. to invest additional funds in URG T One based on those inflated revenue figures (*id.* ¶ 98). G.O.C states that it provided an additional \$665,000 in exchange for inventory to URG T One based on the inflated revenue misrepresentations (*id.* ¶ 99). G.O.C. alleges that BSD Tree never transferred the inventory to URG T One (*id.* ¶ 101). G.O.C. alleges that in May 2023 it subsequently transferred an additional \$170,000 to URG T One based on the inflated revenue misrepresentations (*id.* ¶ 102). G.O.C. further asserts that the revenue figures that Bagbag and BSD Tree provided for URG T One plummeted precipitously after its additional investments, and that BSD Tree failed to satisfy certain requirements of the URG T Shareholders Agreement and the purported URG T One Addendum (*id.* ¶103). In addition, G.O.C. claims that the parties agreed that the net income from URG T One would be distributed equally between BSD Tree and G.O.C., but that BSD Tree failed to send G.O.C. its full share of the net income and stopped sending any of the net income as of August 2023 (*id.* ¶ 107 – 109). G.O.C. also states that BSD Tree has violated the URG T One Shareholder Agreement by engaging in automobile leasing activities in competition with URG T One (*id.* ¶ 112).

² The submissions include a copy of the URG T One Shareholder Agreement, but not the URG T Addendum.

G.O.C. brings this action, derivatively in the right and for the benefit of UGRT Automotive and UGRT One, seeking to redress the alleged injuries suffered by UGRT Automotive and UGRT One as a direct result of defendants' actions (Complaint, ¶ 113). The Complaint alleges causes of action for fraud brought by G.O.C. against Bagbag and BSD Leasing (first cause of action); breach of fiduciary duty brought by UGRT Automotive against BSD Leasing (second cause of action); aiding and abetting breach of fiduciary duty by brought UGRT Automotive against Bagbag and BSD Tree (third cause of action); conversion brought by UGRT Automotive against BSD Leasing, BSD Tree and Bagbag (fourth cause of action); constructive trust brought by UGRT Automotive against BSD Leasing, BSD Tree, and Bagbag (fifth cause of action); breach of contract brought by UGRT Automotive against BSD Leasing (sixth cause of action); fraud brought by G.O.C. against Bagbag, BSD Leasing, and BSD Tree (seventh cause of action); breach of contract brought by UGRT One against BSD Tree (eighth cause of action); injunctive relief based on breach of contract brought by UGRT One against BSD Tree (ninth cause of action); breach of contract brought by GOC against BSD Tree (tenth cause of action); breach of fiduciary duty brought by UGRT One against BSD Tree (eleventh cause of action); and aiding and abetting breach of fiduciary duty brought by UGRT One against Bagbag (twelfth cause of action).

Defendants move, pursuant to CPLR 3211(a)(1) and 3211(a)(7), to dismiss the Complaint.

DISCUSSION

On a motion to dismiss pursuant to CPLR 3211, the pleading is to be afforded a liberal construction (*see* CPLR 3026; *Leon v. Martinez*, 84 NY2d 83, 87 [1994]). The Court must accept the facts alleged in the complaint as true, accord the plaintiff the benefit of every

favorable inference, and determine whether the facts as alleged fit within any cognizable legal theory (*see Leon v. Martinez, supra*).

Under CPLR 3211(a)(1), “dismissal is warranted only if the documentary evidence submitted conclusively establishes a defense or the asserted claim as a matter of law” (*id.*). In asserting a motion under CPLR 3211(a)(7), however, the Court may freely consider affidavits submitted by the plaintiff to remedy any defects in the complaint, and “the criterion is whether the proponent of the pleading has a cause of action, not whether he has stated one” (*id.*, quoting *Guggenheimer v. Ginsburg*, 43 NY 268 [1977]).

As stated, the Complaint alleges causes of action for breach of contract, injunctive relief based on breach of contract, constructive trust, conversion, fraud, breach of fiduciary duty, and aiding and abetting breach of fiduciary duty. In seeking to dismiss, defendants argue that the Complaint fails to state viable claims.

I. Breach of Contract

The sixth, eighth, and tenth causes of action in the Complaint assert claims for breach of contract. In order to state a cause of action for breach of contract, a plaintiff must allege (1) the existence of a valid and enforceable contract between the parties and identify the provision of the contract that was breached, (2) performance by the plaintiff in accordance with the contract, and (3) breach by the defendant of its contractual obligations, resulting in damages to the plaintiff (*see 34-06 73, LLC v. Seneca Ins. Co.*, 39 NY3d 44, 52 [2022]).

Even construing the pleadings as required under CPLR 3211, the allegations in the sixth, eighth and tenth causes of action, as plead, are too conclusory and confusing to state a claim for breach of contract. **This is mostly because plaintiff fails to articulate which of the agreements the factual portion of the complaint details, correspond to which allegations.** For example, in

the sixth cause of action, plaintiff alleges that defendants breached their agreement with UGRT Automotive by failing to provide to UGRT Automotive an agreed upon sum of \$1,375,000 for the purchase of Manhattan Auto. Which agreement is plaintiff referring to? As plaintiff alleges the UGRT Automotive Agreement was already in place when the parties began to contemplate the purchase of Manhattan Auto, is the plaintiff alleging breach of the Auto Agreement or a subsequent contract, oral or otherwise? As plead, it is unclear. Similarly, in the eighth and tenth causes of action, plaintiff alleges a slew of breaches against the defendants. Some breaches appear to arise out of the UGRT One Agreement, some to an addendum which plaintiff did not provide to the court, and possibly collateral oral agreements. Again, as plead, plaintiff's breach of contract claims are all over the place. Therefore, the sixth, eighth and tenth causes of action are dismissed without prejudice.

Moreover, a claim for a permanent injunction is a remedy for an underlying wrong, not a cause of action (*see Talking Capital LLC v. Ormanoff*, 169 AD3d 423, 424 [1st Dept 2019]). Thus, UGRT One's claim against BSD Tree in the ninth cause of action for an injunction is therefore dismissed.

II. Constructive Trust

In the fifth cause of action, UGRT Automotive seeks the imposition of a constructive trust against BSD Leasing, Bagbag, and BSD Tree on any funds and assets defendants improperly derived from UGRT Automotive. "The elements necessary for the imposition of a constructive trust are a confidential or fiduciary relationship, a promise, a transfer in reliance thereon, and unjust enrichment" (*Abacus Fed. Sav. Bank v. Lim*, 75 AD3d 472, 473 [1st Dep't 2010]). A constructive trust will not be imposed unless a legal remedy is inadequate (*see Evans v. Winston & Strawn*, 303 AD2d 331, 333 [2d Dept 2003]).

Here, the Complaint alleges that BSD Leasing and its principal Bagbag had a confidential or fiduciary relationship with UGRT Automotive, and that BSD Leasing, Bagbag, and BSD Tree improperly removed UGRT Automotive's funds, transferred the funds to themselves, and used the funds for their own personal benefit. Plaintiff's claims are conclusory. Plaintiff merely alleges, without any details, that defendants used the funds for their own personal benefit. They do not state what the defendants allegedly used these funds for, nor any basis for this allegation.

Further, the remedy of a constructive trust is not available here because plaintiff has not shown that an award of money is inadequate to compensate plaintiff (*see Ashley MRI Mgt Corp v. Perkes*, 12 Misc 3d 1185[A] *3 [Sup Ct, Nassau County 2006]). Thus, the fifth cause of action is dismissed without prejudice.

III. Conversion

The fourth cause of action seeks damages for conversion. The essential elements of a claim for conversion are the plaintiff's possessory right or interest in the property and the defendant's dominion over the property or interference with it, in derogation of the plaintiff's rights (*see Pappas v. Tzolis*, 20 NY3d 228, 234 [2012]). The allegations in the fourth cause of action are wholly conclusory. There is little attempt to delineate what personal property BSD Leasing, BSD Tree, and Bagbag exercised dominion and control over that belonged to UGRT Automotive. The court is left to guess which paragraphs of the factual recitation apply to this claim. Did plaintiff mean to refer to the cars? The way it is pled, with no underlying facts at all, the claim merely duplicates the improperly pled breach of contract causes of action. Thus, the fourth cause of action is dismissed without prejudice.

IV. Fraud

The first and seventh causes of action assert claims for fraud against Bagbag and BSD Leasing. In order to state a cause of action for fraud, the pleading must allege a misrepresentation or material omission of fact, knowledge of its falsity by the defendant, an intent to induce reliance by the defendant, justifiable reliance by the plaintiff, and damages (*see Eurycleia Partners, LP v. Seward & Kissel, LLP v Agostisi*, 12 NY3d 553, 559 [2009]). The circumstances constituting the alleged fraud must be pleaded with the requisite particularity under CPLR 3016(b) (*id.*). A corporate officer who participates in the commission of a tort may be held individually liable, regardless of whether the officer acted on behalf of the corporation in the course of official duties and regardless of whether the corporate veil is pierced (*see Espinosa v Rand*, 24 AD3d 102, 102 [1st Dept 2005]).

Here, the first cause of action alleges that Bagbag and BSD Leasing knowingly made material misrepresentations and omissions to induce G.O.C. to invest in UGRT Auto and continue to invest in UGRT Auto, and that G.O.C. reasonably relied on those misrepresentations, incurring substantial damages. The seventh cause of action alleges that Bagbag, BSD Leasing, and BSD Tree knowingly made material misrepresentations and omissions to induce G.O.C. to invest in URG T One and to make additional investments in the company. G.O.C. asserts that it reasonably relied on the misrepresentations and omissions, incurring significant damages.

G.O.C.'s fraud claims are dismissed in part and sustained in part. First, plaintiff's first cause of action for fraud is dismissed to the extent that it is premised on G.O.C.'s allegations that it was fraudulently induced into investing into URG T Auto due to defendants' false representations concerning Bagbag's experience and expertise in the automotive industry. The damages are duplicative of plaintiff's improperly pled breach of contract claim (*see Fin. Guar.*

Ins. Co. v. Morgan Stanley ABS Cap. I Inc., 164 AD3d 1126 [1st Dep't 2018]). If there is any difference in the damages, plaintiff has not made it clear in its complaint.

However, the first cause of action for fraud survives with respect to G.O.C.'s allegation that, after its initial investment in URG T Auto, Bagbag presented G.O.C. with a fraudulently executed agreement for the purchase of another business, Manhattan Auto. Plaintiff allegedly relied on this document to transfer half of the purchase price to UGRT Automotive.

For the same reasons, plaintiff's seventh cause of action for fraud is dismissed to the extent that it arises out of G.O.C.'s allegation that defendants' present misrepresentations of material fact fraudulently induced G.O.C. to make its initial investment in UGRT One. The damages are again, duplicative (*see Fin. Guar. Ins. Co. v. Morgan Stanley ABS Cap. I Inc.*, 164 AD3d 1126). However, G.O.C.'s allegation that defendants presented inflated figures for URG T One's revenue-per-car, causing G.O.C. to invest an additional \$170,000, is sustained (*see Wyle Inc. v. ITT Corp.*, 130 AD3d 438)³.

However, the portion of plaintiff's fraud claims seeking disgorgement of profits is dismissed. On a cause of action for fraud, plaintiff can only recover its actual pecuniary loss, not lost profits (*see Connaughton v. Chipotle Mexican Grill, Inc.*, 29 NY3d 137, 142-3 [2017]; *see also Rondeau v. Houston*, 224 AD3d 616, 617 [1st Dep't 2024]).

V. Breach of Fiduciary Duty

The second and eleventh causes of action assert claims for breach of fiduciary duty. A breach of fiduciary is a tort that arises from a violation of a relationship of trust and confidence, such as that of an agent to his principal or a lawyer to his client (*see Vione v. Tewell*, 12 Misc 3d 973 [Sup Ct, NY County 2006]). The elements of a cause of action for breach of fiduciary duty

³ This only applies to plaintiff's allegation that it transferred \$175,000 to URG T One. Plaintiff's claim for the \$665,000 allegedly transferred in exchange for cars is duplicative of the Eighth Cause of Action for breach of contract.

are the existence of a fiduciary relationship, and misconduct by the defendant, resulting in damages (*see Village of Kiryas Joel v. County of Orange*, 144 AD3d 895, 898-899 [2d Dept 2016]). A fiduciary relationship requires a showing of a relation between two persons “when one of them is under a duty to act for or give advice for the benefit of another upon matters within the scope of the relation” (*EBC I, Inc. v. Goldman Sachs & Co.*, 5 NY3d 11, 19 [2005]).

Here, the second cause of action alleges that BSD Leasing was entrusted with the right to manage the activities of UGRT Automotive and to carry out the intentions of the stockholders with respect to the company’s business activities and development, and that BSD leasing breached fiduciary duties of loyalty and care to UGRT Automotive by misappropriating funds from UGRT Automotive (complaint ¶¶ 138 – 140). Specifically, defendants allegedly stole the \$1,975,000 that GOC had previously invested in from UGRT Automotive (complaint ¶ 74). Some of the funds were transferred to BSD Leasing and some of the funds were transferred to Bagbag (complaint ¶¶ 75, 76).

Similarly, the eleventh cause of action alleges that BSD Tree was entrusted with the right to manage the activities of URG T One and to carry out the intentions of the stockholders with respect to the company’s business activities and development, and that BSD Tree breached fiduciary duties of loyalty and care by misappropriating or engaging in self-dealing with funds belonging to or earmarked for URG T One, resulting in damages (complaint ¶¶ 90 - 94, 107 - 108, 188 - 190). Both claims are asserted derivatively.

Defendants’ sole argument in favor of dismissal is that the breach of fiduciary duty claims duplicate the breach of contract claims. Defendants are wrong. The allegations detail an extreme level of self-dealing and diversion of corporate funds that are sufficient to state a claim for breach of fiduciary duty (*see Dar v. SAJ Transportation Ne. LLC*, 235 AD3d 581, 583 (1st

Dep't 2025); *see also Pokoik v. Pokoik*, 115 AD3d 428 [1st Dep't 2014]). This is especially so given that the court has dismissed all claims for breach of contract.

The third cause of action alleges that Bagbag and BSD Tree aided and abetted BSD Leasing's breaches of fiduciary duties, and the twelfth cause of action alleges that Bagbag aided and abetted BSD Tree's breaches of fiduciary duties to URG1 One. In order to state a claim for aiding and breach of fiduciary duty, a plaintiff must allege that a fiduciary duty owed to plaintiff was breached, that defendant knowingly induced or participated in the breach, resulting in damages to the plaintiff (*see Baron v. Galasso*, 83 AD3d 626, 629 [2d Dept 2011]).

The complaint is sufficient in this regard. As corporations, BSD Leasing and BSD Tree can only act through individuals. The Complaint alleges that the corporations acted through Bagbag (¶¶145-46; ¶¶193-95). This is enough to state a claim for aiding and abetting breach of fiduciary duty.

Finally, even though Bagbag was ostensibly acting through the corporations, the allegations of bad faith are of a level that he can still be liable individually (*see Fletcher v. Dakota, Inc.*, 99 AD3d 43, 49 (1st Dept. 2012) ("it has long been held by this Court that a corporate officer who participates in the commission of a tort may be held individually liable, . . . regardless of whether the corporate veil is pierced."); *L.I. City Ventures LLC v. Sismanoglou*, 158 AD3d 567 [1st Dep't 2018] [defendants could be individually liable where they allegedly bought property through sham entity in order to evade broker's discovery of purchase and payment of commission]).

Accordingly, it is

ORDERED that the motion is granted to the extent that the fourth, fifth, sixth, eighth, ninth, and tenth causes of action in the Complaint are dismissed and the motion is otherwise denied; and it is further

ORDERED that the first and seventh causes of action are dismissed in part and sustained in part according to the reasons set forth in the decision; and it is further

ORDERED THAT plaintiffs must file and serve notice of entry of this decision within 5 days of the efiled date of this decision and order.

ORDERED that defendants are directed to serve an answer to the Complaint within 20 days after service a copy of this order with notice of entry; and it is further

ORDERED that counsel are directed to appear for a compliance conference on 5/20/2025 at 11:30 a.m. over Microsoft Teams.

3/31/2025
DATE


MELISSA A. CRANE, J.S.C.

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