

Anand v Sharma

2025 NY Slip Op 32613(U)

June 30, 2025

Supreme Court, New York County

Docket Number: Index No. 659266/2024

Judge: Anar Rathod Patel

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SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK: PART 45

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TARESH ANAND, ANUPAMA BHAMBRI,
SACHIN DHAWAN, JPS KOHLI

Plaintiffs,

- v -

TRISHNA SHARMA, PAYAL SHARMA, RSVP
HOSPITALITY LLC, RAJIV SHARMA,

Defendants.

INDEX NO. 659266/2024

MOTION DATE 03/26/2025

MOTION SEQ. NO. 002

DECISION + ORDER ON MOTION

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HON. ANAR RATHOD PATEL:

The following e-filed documents, listed by NYSCEF document number (Motion 002) 33–37, 44, 47–52 were read on this MOTION TO DISMISS.

This action seeks damages for breach of contract, fraud, breach of fiduciary duty, unjust enrichment, and related causes of action arising of an agreement of sale, pursuant to which Plaintiffs Taresh Anand (Taresh), Anupama Bhambri (Anupama), Sachin Dhawan (Sachin), and JPS Hohli (JPS) sold their 45% membership interests in Defendant RSVP Hospitality (RSVP) to Defendant Trishna Sharma (Trishna). Plaintiffs allege that Trishna, who is the designated manager of the company, and Defendants Payal Sharma (Payal) and Rajiv Sharma (Rajiv), Trishna’s parents and allegedly the *de facto* managers of the company, misrepresented and failed to disclose the true value of Plaintiffs’ membership interests and certain grant funds received from the federal government, both orally and in the agreement, during negotiations regarding the purchase price under the agreement and upon the execution thereof, resulting in Plaintiffs being deprived of the true value of their membership interests upon payment under the agreement.

Defendants now move, pursuant to CPLR § 3211 (a)(1), (5), and (7), for dismissal of the Amended Complaint (NYSCEF Doc. No. 19) on the grounds of documentary evidence, release, and for failure to state a cause of action.

For the reasons set forth below, Defendants’ Motion to Dismiss the Amended Complaint is GRANTED in part and DENIED in part.

Relevant Factual and Procedural Background

The following facts are taken from the Amended Complaint and are assumed to be true for the purposes of this motion (*Leon v Martinez*, 84 NY2d 83, 87 [1994]).

Prior to the transactions that are the subject of this action, Plaintiffs collectively held 45% of RSVP's membership interests (the Membership Interests), consisting of 10% by Taresh, 15% by Anupama, 10% by Sachin, and 10% by JPS (Amended Complaint, ¶ 15). Trishna held 40% of the Membership Interests (*id.*, ¶ 9).

Pursuant to the Operating Agreement dated August 25, 2017 (the Operating Agreement [NYSCEF Doc. No. 7]), RSVP is a manager-managed limited liability company, and Trishna is the designated manager of the company (Amended Complaint, ¶ 11). Plaintiffs allege that, notwithstanding the designation in the Operating Agreement, Trishna was RSVP's manager in name only (*id.*, ¶ 12) and that, in reality, Payal and Rajiv were RSVP's fact managers (*id.*, ¶ 13). According to Plaintiffs, as the *de facto* managers of RSVP, Payal and Rajiv were engaged in and responsible for all aspects of running the company, including but not limited to finances, accounting, taxes, books and records, lease negotiations, daily operations, hiring and firing personnel, ordering food and supplies, public relations, and marketing (*id.*, ¶ 14).

On September 14, 2022, Plaintiffs, as sellers, and Trishna, as purchaser, entered into the Agreement for Sale of Membership Interest (the Agreement [NYSCEF Doc. No. 8]), pursuant to which Plaintiffs sold the Membership Interests to Trishna for the amount of \$1,600,000.00 (the Purchase Price) (Amended Complaint, ¶ 16). Plaintiffs alleges that the Agreement was drafted by or on behalf of one or more of the Defendants (*id.*, ¶ 17).

Plaintiffs allege that, pursuant to the Agreement and prior related communications, Defendants represented to them that the Purchase Price constituted the value of the Membership Interests, together with any and all undistributed profits, as well as any and all profits and monies received from any government agencies or third parties, through December 31, 2021 (*id.*, ¶¶ 18–19).

The American Rescue Plan Act of 2021 established, among other things, the Restaurant Revitalization Fund (the RRF), to provide funding to restaurants and other eligible entities that suffered revenue losses related to the COVID-19 pandemic (*id.*, ¶ 20). Plaintiffs allege that, subsequent to the closing of the transaction that is the subject of the Agreement, they learned that, on May 15, 2021, RSVP was approved for, and shortly thereafter received, a federal government grant from the RRF in the amount of \$2,176,123.00 (the RRF Grant) (*id.*, ¶ 21).

Plaintiffs' central allegation in this action is that, notwithstanding the fact that the RRF Grant was applied for, approved, and paid prior to December 31, 2021 (*i.e.*, the valuation date of the Membership Interests pursuant to the Agreement), Defendants failed to disclose the RRF Grant to them, both at the time of the RRF Grant in May 2021, and when negotiating the terms of the Agreement in September 2022 (*id.*, ¶ 22). Plaintiffs allege that Defendants' failure to disclose the RRF Grant prevented them from realizing the true value of the Membership Interests, and that, as a result, the RRF Grant was not included in the valuation of the Membership Interests or Purchase

Price calculations set forth in the Agreement (*id.*, ¶¶ 23–34). Plaintiffs further allege that had Defendants disclosed the RRF Grant, the value of the Membership Interests, and thus the Purchase Price under the Agreement, would have increased by at least \$979,255.35, *i.e.*, 45% of the RRF Grant (*id.*, ¶ 25).

According to Plaintiffs, despite repeated demands, Defendants have refused to pay them \$979,255.35, representing the added value of the Membership Interests as a result of the RRF Grant, which, they allege, should have been included in the Purchase Price and value of the Membership Interests under the Agreement (*id.*, ¶ 28).

Plaintiffs assert seven causes of action in the Amended Complaint: (1) breach of contract; (2) breach of fiduciary duty; (3) aiding and abetting breach of fiduciary duty; (4) fraud; (5) fraudulent conspiracy; (6) unjust enrichment; and (7) attorneys' fees.

Legal Discussion

“On a motion to dismiss for failure to state a cause of action under CPLR § 3211 § (a) (7), [the Court must] accept the facts as alleged in the complaint as true, accord Plaintiff the benefit of every possible favorable inference, and determine only whether the facts as alleged fit within any cognizable legal theory” (*Connaughton v Chipotle Mexican Grill, Inc.*, 29 NY3d 137, 141 [2017] [citation omitted]). The complaint should be liberally construed, and the allegations contained therein are given the benefit of every possible inference (*Leon*, 84 NY2d at 87).

A defendant moving to dismiss under CPLR § 3211 (a) (1) must demonstrate that “the documentary evidence utterly refutes the plaintiff’s factual allegations, conclusively establishing a defense as a matter of law” (*Seaman v Schulte Roth & Zabel LLP*, 176 AD3d 538, 538–39 [1st Dept 2019], quoting *Goshen v Mutual Life Ins. Co. of N.Y.*, 98 NY2d 314, 326 [2002]; *N.H. v Graham*, 85 Misc 3d 1266[A], 2025 NY Slip Op 50645[U], * 3 [Sup Ct, NY County 2025] [“The Appellate Division, First Department, has explained that the documentary evidence must ‘definitely dispose of the Plaintiff’s claim’”] [citation omitted]; *see also Basis Yield Alpha Fund (Master) v Goldman Sachs Group, Inc.*, 115 AD3d 128, 135 [1st Dept 2014] [“When documentary evidence is submitted by a Defendant ‘the standard morphs from whether the Plaintiff has stated a cause of action to whether it has one’”] [citation omitted]).

Documentary evidence includes, *inter alia*, contracts and other writings, provided they are unambiguous, indisputably authentic, and contain essentially undeniable facts (*see VXi Lux Holdco S.A.R.L. v SIC Holdings, LLC*, 171 AD3d 189, 193 [1st Dept 2019]; *see also Top v Glicklich*, 68 Misc 3d 1224[A], 2020 NY Slip Op 51059[U], * 2 [Sup Ct, NY County 2020]). On the other hand, where the documents that are submitted are ambiguous, fail to contain facts that are essentially undeniable, or fail to utterly refute the plaintiff’s claims, they do not qualify as documentary evidence, and are insufficient to grant a motion to dismiss (*see Whitestone Constr. Corp. v F.J. Sciame Constr. Co. Inc.*, 194 AD3d 532, 534 [1st Dept 2021]; *VXi Lux Holdco S.A.R.L.*, 171 AD3d at 193; *see also Gomez-Jimenez v New York Law Sch.*, 36 Misc 3d 230, 237 [Sup Ct, NY County], *affd*, 103 AD3d 13 [1st Dept 2012] [“Ambiguous documents cannot form the basis for a dismissal (under CPLR § 3211 [a] [1])”]).

Construing the claims in the generous matter to which they are entitled, this Court finds that the allegations set forth in the Amended Complaint are facially sufficient to state causes of action for breach of contract, breach of fiduciary duty, aiding and abetting breach of fiduciary duty, fraud, and fraudulent conspiracy. However, as more fully discussed herein, the unjust enrichment claim is dismissed as against Trishna as duplicative of the breach of contract claim, but remains a valid claim as against Payal, Rajiv and RSVP.

Breach of Contract (First Cause of Action)

In their first cause of action for breach of contract against Trishna, Plaintiffs allege that “Trishna breached the Agreement by (a) misrepresenting and/or failing to disclose the true value of the Membership Interests and (b) failing to pay Plaintiffs the true value of the Membership Interests” (Amended Complaint, ¶ 33).

To state a claim for breach of contract, Plaintiffs must allege: (1) the existence of the Agreement; (2) Plaintiffs’ performance thereunder; (3) breach by Trishna; and (4) resulting damages (*see 34-06 73, LLC v Seneca Ins. Co.*, 39 NY3d 44, 52 [2022]; *Noto v Planck*, 228 AD3d 516, 516 [1st Dept 2024]).

Defendants’ Motion to Dismiss the breach of contract cause of action is denied. The Amended Complaint sufficiently alleges the existence of the Agreement (which is admitted by Defendants), Plaintiffs’ performance thereunder, Trishna’s breach thereof, by misrepresenting and/or failing to disclose the true value of the Membership Interests, and failing to pay Plaintiffs the true value of the Membership Interests, and Plaintiffs’ resulting damages (*see Amended Complaint*, ¶¶ 16–27, 31–33, 40).

The Court rejects Defendants’ argument that the Agreement, together with the payment confirmations and membership transfer certifications (NYSCEF Docs Nos. 9–10), constitutes documentary evidence sufficient to dispose of Plaintiffs’ claims (*see Defendants’ memorandum* [NYSCEF Doc. No. 37], at 3–5, 9–10). Defendants argue, in a wholly conclusory manner, that because the Agreement was consummated and Trishna paid Plaintiffs for the Membership Interests, no breach of contract could have occurred. However, contrary to Defendants’ arguments, the Agreement does not definitively dispose of Plaintiffs’ claims because the language set forth in the representations and warranties section of the Agreement is unclear and ambiguous, and thus fails to refute the allegations that Defendants misrepresented and intentionally concealed the RRF Grant and the true value of the Membership Interests.

Although Section 7 of the Agreement is entitled, “SELLER REPRESENTATIONS AND WARRANTIES”, this provision, in reality, appears to be the buyer’s (*i.e.*, Trishna’s) representations and warranties that the Purchase Price she is paying includes the value of the Membership Interests, and any and all profits and monies received from any government agencies or third parties through December 31, 2021:

“Additionally, ***Seller represents*** that the payment of \$1.6 Million ***by the Buyer to Seller*** includes the value of their units and any and all profits and monies received from any government agencies or third parties from the beginning of time through

December 31, 2021[.] ... **The Buyer and the Seller** have specifically agreed that the purchase price of \$1,600,000.00 ... represents the full purchase price of their membership interest together with any and all profits of any kind generated by RSVP since its inception through December 31, 2021 ... and any and all payments of any kind made by any entity or governmental organization to RSVP”

(Agreement, § 7 [emphasis added]).

Thus, the above representations are as to the buyer’s representations, not those of the seller (the “Seller” representing that the payment “by the Buyer to the Seller” includes certain things), thus rendering this clause ambiguous. This clause is also internally inconsistent and contradictory, as the second sentence includes a representation by **both** buyer and seller that the Purchase Price included the value of the Membership Interests and any and all profits and monies received from any government agencies or third parties through December 31, 2021 (*see id.*).

Moreover, Section 10 of the Agreement contains a list of additional, more typical, seller’s representations and warranties, thus further supporting the conclusion that the “seller” representations and warranties in Section 7 (regarding the value of the Membership Interests and receipt of government funds) are ambiguous, and are actually those of the buyer.

Accordingly, because Section 7 of the Agreement is ambiguous, it cannot constitute documentary evidence to support a dismissal motion pursuant to CPLR § 3211 (a) (1) (*see e.g., VXi Lux Holdco S.A.R.L.*, 171 AD3d at 193 [“the terms of the SPA do not ‘utterly refute the Plaintiff’s allegations” and, “as applied to the factual allegations advanced by Plaintiff in this case, the terms of section 8.03 (a) of the SPA are ambiguous”]; *Interstate Indem. Co. v E. 77 Owners Co., LLC*, 224 AD3d 456, 457 [1st Dept 2024] [given that the contract “language is ambiguous, the very fact that parol evidence may be needed means that the settlement agreement itself does not utterly refute (Plaintiff’s) factual allegations”]). This is especially true where, as here, Defendants allegedly drafted the Agreement (*see* Amended Complaint, ¶ 17), and any ambiguity must be construed against the drafting party (*see Alphonse Hotel Corp. v 76 Corp.*, 273 AD2d 124, 124 [1st Dept 2000]; *Trief v Elghanayan*, 251 AD2d 123, 123 [1st Dept 1998]).

This Court finds that Plaintiffs have also sufficiently stated a cause of action for breach of the implied covenant of good faith and fair dealing contained in the Agreement. “In New York, all contracts imply a covenant of good faith and fair dealing in the course of performance,” which covenant embraces a pledge that ‘neither party shall do anything which will have the effect of destroying or injuring the right of the other party to receive the fruits of the contract’” (*511 W. 232nd Owners Corp. v Jennifer Realty Co.*, 98 NY2d 144, 153 [2002] [citation omitted]). This covenant is breached when a party acts in a manner that, while not expressly prohibited by the contract, would deprive the other party of the right to receive its benefits (*see Spicer v Garda World Consulting (UK) Ltd.*, 231 AD3d 635, 636 [1st Dept 2024]).

Here, Plaintiff alleges that the purpose of the Agreement, among other things, was to ensure that they would be paid the true value of the Membership Interests (Amended Complaint, ¶ 35). Plaintiffs allege that they therefore reasonably believed and expected that the representations contained in the Agreement regarding the value of the Membership Interests, which

representations determined the Purchase Price, would be true and accurate. Plaintiffs further allege that Trishna materially breached her duty of good faith and fair dealing by misrepresenting and/or failing to disclose the true value of the Membership Interests during negotiations regarding the Purchase Price under the Agreement and upon the execution thereof, and that thus, as a direct and proximate result of her breach of the implied covenant of good faith and fair dealing, Plaintiffs have been deprived of the benefits of the Agreement (*see id.*, ¶¶ 36–40).

This Court finds that these allegations fairly allege a claim against Trishna for breach of the covenant of good faith and fair dealing inherent in the Agreement (*see e.g., Spicer*, 231 AD3d at 636; *Whitestone Constr. Corp.*, 194 AD3d at 533).

Breach of Fiduciary Duty (Second Cause of Action)

In their second cause of action for breach of fiduciary duty against Trishna, Payal, and Rajiv, Plaintiffs allege that, pursuant to Limited Liability Company Law (LLCL) § 409 and applicable common law, Trishna, as RSVP’s designated manager, and Payal and Rajiv, as *de facto* managers of the company, each had a fiduciary relationship with Plaintiffs as members of RSVP (Amended Complaint, ¶¶ 42–44). Plaintiffs further allege that Defendants breached their fiduciary duty by intentionally concealing and failing to disclose the RRF Grant, and misrepresenting the true value of the Membership Interests (*id.*, ¶ 45), and that, as a result, they have been damaged in the amount of \$979,255.35 (*id.*, ¶ 50).

To state a claim for breach of fiduciary duty, Plaintiffs must allege: (1) the existence of a fiduciary relationship; (2) misconduct by the Defendants; and (3) damages caused by the misconduct (*see Tribeca Preparatory LLC v Aninias*, 225 AD3d 508, 509 [1st Dept 2024]; *Greenberg v Wiesel*, 186 AD3d 1336, 1338 [2d Dept 2020]). As is relevant here, a fiduciary owes a duty of undivided loyalty to those whose interests she is to protect, barring not only blatant self-dealing by the fiduciary, but also requiring the avoidance of personal conflicts of interest with those to whom the duty is owed (*see id.*). Moreover, in the context of a limited liability company, a manager has fiduciary obligations to the company’s members (*see* LLCL § 409; *Greenberg*, 186 AD3d at 1338 [“Here, the Plaintiff has alleged that Wiesel is the sole manager of A & Z—which, if true, would impose a fiduciary duty on Wiesel arising out of her position as the sole manager of A & Z”]; *Winston Chiu v Man Choi Chiu*, 71 AD3d 621, 623 [2d Dept 2010] [“Defendant Man Choi Chiu, as the managing member of the LLC, owed a fiduciary duty to the Plaintiff”]; *see also McKinnon Doxsee Agency, Inc. v Gallina*, 187 AD3d 733, 736 [2d Dept 2020] [stating that both member managers and non-member managers owe fiduciary duties]).

As designated manager of RSVP, Trishna clearly owed fiduciary obligations to Plaintiffs. Moreover, assuming the factual allegations of the Amended Complaint to be true, as *de facto* managers of the company, Payal and Rajiv likewise had fiduciary duties to Plaintiffs and, as such, may be liable for breach of fiduciary duty (*see e.g., Dar v SAJ Transportation Northeast LLC*, 235 A.D3d 581, 583 [1st Dept 2025] [“the second third-party complaint sufficiently pleads that (third-party Defendant) owed SAJ a fiduciary duty by virtue of being its manager and damaged it by his misconduct”]; *Tribeca Preparatory LLC*, 225 AD3d at 509 [“Plaintiff pleaded the existence of a fiduciary relationship, as Defendant Shirley Aninias was one of the three managers on Plaintiff’s board of managers”]).

Accordingly, this Court finds that, by detailing Defendants' self-dealing conduct in failing to disclose all material facts regarding Plaintiffs' sale of the Membership Interests to Trishna (*i.e.*, by materially misrepresenting the true value of the Membership Interests and failing to disclose the RRF Grant), as well as Plaintiffs' resulting damages, this Court finds that Plaintiffs have stated a breach of fiduciary duty claim against Trishna, Payal, and Rajiv.

The Court rejects Defendants' argument that the Operating Agreement (NYSCEF Doc. No. 7) constitutes documentary evidence which mandates dismissal of the breach of fiduciary duty claims against Defendants Payal and Rajiv (*see* Defendants' memorandum, at 6–7). Defendants argue that, because the Operating Agreement names Trishna as RSVP's manager, this definitively proves that Payal and Trishna were not *de facto* managers. However, the Operating Agreement fails to utterly refute Plaintiffs' factual allegations, or definitively dispose of Plaintiffs' claims because Defendants all concede in their affidavits that Payal and Rajiv "assist" with the operations of the company (*see* Trishna aff. [NYSCEF Doc. No. 34], ¶ 5; Payal aff. [NYSCEF Doc. No. 35], ¶ 7; Rajiv aff. [NYSCEF Doc. No. 36], ¶ 7).

Accordingly, Defendants' Motion to Dismiss the second cause of action for breach of fiduciary duty is denied.

Aiding and Abetting Breach of Fiduciary Duty (Third Cause of Action)

A cause of action alleging the aiding and abetting of a breach of fiduciary duty must plead (1) the existence of a fiduciary duty owed to the plaintiff that was breached; (2) that the defendant "knowingly induced or participated" in the breach; and (3) that the plaintiff suffered damages caused by the breach (*Kaufman v Cohen*, 307 AD2d 113, 125 [1st Dept 2003]; *accord Bullmore v Ernst & Young Cayman Is.*, 45 AD3d 461, 464 [1st Dept 2007]). Knowing participation in a breach of fiduciary duty occurs when a Defendant provides substantial assistance to the primary violator—when the Defendant affirmatively assists, helps conceal or fails to act when required to do so, thereby enabling the breach (*see 1650 Broadway Assocs., Inc. v Sturm*, 228 AD3d 1, 5 [1st Dept 2024]).

This Court finds that Plaintiffs sufficiently plead their third cause of action for aiding and abetting breach of fiduciary duty by alleging that "[b]y intentionally failing to disclose the RRF Grant and misrepresenting the true value of the Membership Interests, and/or participating in such failure and misrepresentation ... Trishna, Payal and Rajiv each breached their fiduciary duties to Plaintiffs," that each Defendant "knowingly induced and/or participated in Trishna, Payal and Rajiv's breaches of fiduciary duties," that each Defendant "provided substantial assistance to Defendants Trishna, Payal and Rajiv in their breaches of fiduciary duties," and that they were damaged thereby (Amended Complaint, ¶¶ 53–54, 55, 57; *see Tiny 1, Ltd. v Samfet Marble Inc.*, 201 AD3d 423, 424 [1st Dept 2022]; *Bullen v Cohn Reznick, LLP*, 194 AD3d 637, 638 [1st Dept 2021]).

Fraud (Fourth Cause of Action)

In an action to recover damages for fraud, the plaintiff must prove a misrepresentation or a material omission of fact which was false and known to be false by defendant, made for the purpose of inducing the other party to rely upon it, justifiable reliance of the other party on the misrepresentation or material omission, and injury (*Lama Holding Co. v Smith Barney*, 88 NY2d 413, 421 [1996]; *accord KS Trade LLC v International Gemological Inst., Inc.*, 190 AD3d 556, 558 [1st Dept 2021]; *Ambac Assur. Corp. v Countrywide Home Loans, Inc.*, 151 AD3d 83, 85 [1st Dept 2017], *affd* 31 NY3d 569 [2018]). While the circumstances of the fraud must be stated in detail pursuant to CPLR § 3016 (b), this does not mean that unassailable proof of fraud is required (*see Pludeman v Northern Leasing Sys., Inc.*, 10 NY3d 486, 492 [2008]; *MBIA Ins. Corp. v Countrywide Home Loans, Inc.*, 87 AD3d 287, 295 [1st Dept 2011]). Rather, the CPLR § 3016 (b) pleading requirement is satisfied when the facts alleged are sufficient to permit a reasonable inference of fraud (*see id.*).

This Court find that the following facts set forth in Amended Complaint comply with the particularity requirement, and sufficiently allege a reasonable inference of fraud: (1) Defendants' material misrepresentations and/or omissions of fact by (a) materially misrepresenting the Purchase Price as including the value of the Membership Interests and any and all profits and monies received from any government agencies or third parties through December 31, 2021 and (b) intentionally concealing and failing to disclose the RRF Grant; (2) Defendants' intent to induce Plaintiffs' reliance on such representations and omissions; (3) the falsity of such representations and omissions when made by Defendants to Plaintiffs; (4) Plaintiffs' justifiable reliance on the false representations and omissions; and (5) resulting damages consisting of the failure to receive the true value of the Membership Interests upon consummation of the sale (*see* Amended Complaint, ¶¶ 59–77).

The Court rejects Defendants' argument that the fraud claim must be dismissed as duplicative of the breach of contract cause of action. Where a Plaintiff is allegedly fraudulently induced into entering into a contract, the misrepresentation alleged must be of a present fact collateral to the contract, as opposed to a future promise of performance, "in order to present a viable claim that is not duplicative of a breach of contract claim" (*Wyle Inc. v ITT Corp.*, 130 AD3d 438, 439 [1st Dept 2015]). Thus, because the misrepresentation alleged here is one of present fact, the fraud claim is not duplicative of the breach of contract claim (*see e.g., IS Chrystie Mgt. LLC v ADP, LLC*, 205 AD3d 418, 418 [1st Dept 2022] ["The fraud claim is not duplicative of the contract claim" because it alleges "a misrepresentation of present facts (which) is collateral to the contract" [citation omitted]; *International Business Machines Corp. v GlobalFoundries US*, 204 AD3d 441, 442 [1st Dept 2022] [same]).

The Court also rejects Defendants' argument that the representations or disclaimers in the Agreement negate justifiable reliance as, despite any such representations or disclaimers, Plaintiffs allege that Defendants had peculiar knowledge of the underlying fraud (*see KS Trade LLC*, 190 AD3d at 558), and Defendants' documentary evidence fails to establish that Plaintiffs knew the relevant facts surrounding the RRF Grant prior to execution of the Agreement (*see ABN AMRO Cap. USA LLC v Amerra Cap. Mgt., LLC*, 211 AD3d 566, 567 [1st Dept 2022]).

Defendants also argue, for the first time on reply, that Plaintiffs' breach of fiduciary duty and fraud claims should be dismissed because the data concerning the RRF Grant was publicly available since July 2021. In making this argument, Defendants supply a link to the Small Business Administration website for the RRF dataset (*see* Defendants' reply memorandum [NYSCEF Doc. No. 49], at 3).

However, whether or not such information was publicly available is irrelevant, as Plaintiffs specifically allege in their breach of fiduciary duty, aiding and abetting breach of fiduciary duty, and fraud causes of action that Defendants intentionally and actively concealed and/or failed to disclose this information from Defendants (*see* Amended Complaint, ¶¶ 45, 53, 64). Accordingly, discovery needs to be conducted with respect to the disclosures about the RRF Grant, including how the evaluation of the value of the Membership Interests was ultimately made, and thus, whether Defendants, in fact, actively concealed or failed to disclose this information to Plaintiffs.

In any event, the Court is not required to consider Defendants' argument, because it was raised for the first time on reply (*see Martinez v Stericycle, Inc.*, 234 AD3d 614, 615 [1st Dept 2025]; *Fein v Langer*, 233 AD3d 79, 95 [1st Dept 2024]).

Fraudulent Conspiracy (Fifth Cause of Action)

In their fifth cause of action for fraudulent conspiracy, Plaintiffs allege that Defendants had a common objective, and fraudulently conspired in planning and agreeing to deprive Plaintiffs of the true value of the Membership Interests (*see* Amended Complaint, ¶¶ 81, 84).

However, under New York law, there is no independent cause of action for conspiracy to commit a tort (*ALP, Inc. v Moskowitz*, 204 AD3d 454, 456 [1st Dept 2022], citing *Alexander & Alexander of N.Y., Inc. v Fritzen*, 68 NY2d 968, 969 [1986] ["a mere conspiracy to commit a (tort) is never of itself a cause of action"]; *see also Agostini v Sobol*, 304 AD2d 395, 395 [1st Dept 2003] ["A mere conspiracy to commit a fraud is never of itself a cause of action"]; *Solovay v Greater N.Y. Sav. Bank*, 198 AD2d 27, 27 [1st Dept 1993] ["There is no substantive tort of conspiracy"]).

Rather, "allegations of conspiracy are cognizable only to connect the actions of separate Defendants with an otherwise actionable tort" (*Alexander & Alexander*, 68 NY2d at 969; *see also McSpedon v Levine*, 158 AD3d 618, 621 [2d Dept 2018] ["a plaintiff may plead the existence of a conspiracy in order to connect the actions of the individual defendants with an actionable, underlying tort, and establish that those actions were part of a common scheme"]). As such, "[i]n order to survive a motion to dismiss a conspiracy cause of action, a plaintiff must sufficiently 'allege an actionable underlying tort'" (*see Charney v. Sullivan & Cromwell LLP*, 17 Misc 3d 1105[A], 2007 NY Slip Op 51832[U], * 3 [Sup Ct, NY County 2007]).

Because, as previously stated, Plaintiffs have sufficiently alleged a fraud claim, their fifth cause of action for fraudulent conspiracy must be sustained as well, especially given Plaintiffs' allegations of a common plan or scheme (*see McSpedon*, 158 AD3d at 621).

Unjust Enrichment (Sixth Cause of Action)

To state a claim for unjust enrichment, the plaintiff must allege that the defendant was enriched at the plaintiff's expense, and that it is against equity and good conscience to permit the defendant to retain what is sought to be recovered (*see Mandarin Trading Ltd. v Wildenstein*, 16 NY3d 173, 182 [2011]; *Kramer v Greene*, 142 AD3d 438, 442 [1st Dept 2016]).

However, an unjust enrichment claim cannot stand as an alternate cause of action where, as here, a valid and enforceable contract governs the subject matter of the dispute (*Cox v NAP Constr. Co., Inc.*, 10 NY3d 592, 607 [2008] ["a party may not recover in quantum meruit or unjust enrichment where the parties have entered into a contract that governs the subject matter"]; *see also IDT Corp. v Morgan Stanley Dean Witter & Co.*, 12 NY3d 132, 142 [2009]). Thus, unjust enrichment is available only "in the absence of an actual agreement" (*Pappas v Tzolis*, 20 NY3d 228, 234 [2012] [emphasis in original; citation omitted]; *see also Santander Bank, N.A. v Rubin Trading Corp.*, 68 Misc 3d 1013, 1022 [Sup Ct, Kings County 2020] ["A plaintiff may state alternative causes of action for breach of contract and unjust enrichment which are predicated on the same facts only where there is a bona fide dispute as to the existence of a contract or where the contract does not cover the dispute in issue"]).

Accordingly, because the Agreement governs the relationship between Plaintiffs and Defendant Trishna, who is a signatory to the Agreement, the unjust enrichment claim is duplicative of the breach of contract claim and must be dismissed as against Trishna.

However, this argument does not apply to Defendants Payal, Rajiv and RSVP, as they are not parties to the Agreement on which the breach of contract claim is based (*see ABN AMRO Cap. USA LLC*, 211 AD3d at 568 ["The unjust enrichment claim is also not duplicative of the breach of contract claim, because it was asserted only against the two Defendant entities that were not parties to either subordination agreement"]). As such, Defendants' Motion to Dismiss the unjust enrichment claim against these parties is denied, as the Amended Complaint fairly alleges that these Defendants were enriched at Plaintiffs' expense by (1) intentionally misrepresenting the true value of the Membership Interests, and thus the Purchase Price under the Agreement, and (2) intentionally concealing and failing to disclose the RRF Grant, and that it is against equity and good conscience to allow Defendants to retain the benefits resulting from their misconduct (*see Amended Complaint*, ¶¶ 87–91; *see e.g., Greenberg v Wiesel*, 186 AD3d 1336, 1337–38 [1st Dept 2020]) ["Here, the sixth and seventh causes of action, which allege unjust enrichment, were sufficiently pleaded since they allege that Wiesel was enriched at the expense of the Plaintiff and A & Z, and that it was against equity and good conscience to permit Wiesel to retain what was sought to be recovered"]).

Defendants' Release Defense

Finally, Defendants contend that the release contained in Section 23 of the Agreement requires dismissal of the causes of action for breach of contract, aiding and abetting breach of fiduciary duty, fraud, fraudulent conspiracy, unjust enrichment and attorneys' fees, because it expressly provided a full and complete general release of both Trishna and RSVP.

On a motion pursuant to CPLR § 3211(a) (5) based on release, the general test is whether the release is valid, clear and unambiguous on its face (see *Sacchetti-Virga v Bonilla*, 158 AD3d 783, 783-84 [2d Dept 2018]). If so, the release acts as a complete bar to an action on a claim that is the subject of the release absent, inter alia, fraudulent inducement, fraudulent concealment or misrepresentation (see *id.*; see also *Centro Empresarial Cempresa S.A. v America Movil, S.A.B. DE C.V.*, 17 NY 3d 269, 276 [2011] [“A release may be invalidated ... for any of ‘the traditional bases for setting aside written agreements, namely, duress, illegality, fraud, or mutual mistake’”]).

Thus, a motion to dismiss based on release should be denied where, as here, it is alleged that the release was procured by fraud or duress (see e.g., *Sacchetti-Virga*, 158 AD3d at 784 [denying motion to dismiss on ground that “the Plaintiff’s allegations were sufficient to raise a question of fact as to whether the Defendants procured the release by fraud, whether the release was signed by the Plaintiff under circumstances which indicate unfairness, and whether it was ‘not fairly and knowingly made’”] [citation omitted]; *Pacheco v 32-42 55th St. Realty, LLC*, 139 AD3d 833, 834 [2d Dept 2016][same]).

Because the release is contained in the Agreement, and Plaintiffs allege that they were fraudulently induced into entering the Agreement, Defendants’ Motion to Dismiss on this ground must be denied (see *id.*).

The Court has considered the remaining arguments and finds them to be without merit.

Accordingly, it is

ORDERED that the Motion to Dismiss the Amended Complaint is GRANTED to the limited extent that the sixth cause of action for unjust enrichment is dismissed as against Defendant Trishna Sharma, but is DENIED in all other respects; and it is further

ORDERED that Defendants are directed to serve an answer to the Amended Complaint within 20 (twenty) days after service of a copy of this order with notice of entry.

June 30, 2025

DATE



ANAR RATHOD PATEL, A.J.S.C.

CHECK ONE:

CASE DISPOSED
GRANTED
SETTLE ORDER
INCLUDES TRANSFER/REASSIGN

DENIED

NON-FINAL DISPOSITION
GRANTED IN PART
SUBMIT ORDER
FIDUCIARY APPOINTMENT

OTHER

REFERENCE