

4501 AMJ, LLC v Babaev

2025 NY Slip Op 32922(U)

July 18, 2025

Supreme Court, New York County

Docket Number: Index No. 652701/2024

Judge: Lyle E. Frank

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This opinion is uncorrected and not selected for official publication.

**SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY**

PRESENT: HON. LYLE E. FRANK PART 11M

Justice

-----X

4501 AMJ, LLC,

Plaintiff,

- v -

MEIR BABAIEV, STEVE SAMANDAROV, AB CAPSTONE
LLC,4501 SS, LLC,SS NORTHERN BLVD, LLC,WAFI 45-01
REALTY, LLC,AMI CAPITAL HOLDINGS, LLC,JONES
HOLDINGS, LLC,MCPMAHON COMMERCIAL REAL
ESTATE LLC,SS NORTHERN MANAGEMENT, LLC,45-01
NORTHERN LLC

Defendant.

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INDEX NO. 652701/2024

MOTION DATE 02/14/2025

MOTION SEQ. NO. 002

**DECISION + ORDER ON
MOTION**

The following e-filed documents, listed by NYSCEF document number (Motion 002) 32, 33, 34, 35, 36, 37, 38, 39, 41, 43, 44, 45

were read on this motion to/for DISMISS.

Upon the foregoing documents, the motion to dismiss is granted in part.

Background

In 2019, 4501 AMJ, LLC (“Plaintiff”) became a minority member in and made an initial capital contribution of \$2.5 million to defendant 45-01 Northern LLC (“Defendant Company”), who was the sole member of non-party Northern Blvs. LIC LLC (“NB LLC”). NB LLC is the owner of real property in Queens, which was the subject of a planned construction project. According to the operating agreement for the Defendant Company, AB Capstone LLC (controlled by Meir Babaev) was to serve as the manager of the company. It appears that at some point, defendants 4501 SS, LLC and/or SS Northern Blvd, LLC (controlled by defendant Steve Samandarov, collectively with AB Capstone and Babaev the “Managing Defendants”) became managers of the Defendant Company.

Plaintiff alleges a variety of problems with the planned construction project, including a failure to send them the quarterly expense statements, failure to perform due diligence, and delays on the project. The Managing Defendants made five capital calls, of which Plaintiff funded the first two in full, the third in half, and Plaintiff did not participate at all in the final two capital calls. Due to an amendment to the operating agreement (the “First Amendment”), of which Plaintiff contests the validity, Plaintiff’s shares were subject to triple dilution for failing to participate in the final two capital calls. Plaintiff initiated the underlying proceeding in May of 2024, pleading six causes of action in the amended complaint. Defendants bring the present partial motion to dismiss.

Standard of Review

It is well settled that when considering a motion to dismiss pursuant to CPLR § 3211, “the pleading is to be liberally construed, accepting all the facts alleged in the pleading to be true and according the plaintiff the benefit of every possible inference.” *Avgush v. Town of Yorktown*, 303 A.D.2d 340, 341 [2d Dept. 2003]. Dismissal of the complaint is warranted “if the plaintiff fails to assert facts in support of an element of the claim, or if the factual allegations and inferences to be drawn from them do not allow for an enforceable right of recovery.” *Connaughton v. Chipotle Mexican Grill, Inc*, 29 N.Y.3d 137, 142 [2017].

CPLR § 3211(a)(1) allows for a complaint to be dismissed if there is a “defense founded upon documentary evidence.” Dismissal is only warranted under this provision if “the documentary evidence submitted conclusively establishes a defense to the asserted claims as a matter of law.” *Leon v. Martinez*, 84 N.Y.2d 83, 88 [1994].

A party may move for a judgment from the court dismissing causes of action asserted against them based on the fact that the pleading fails to state a cause of action. CPLR

§ 3211(a)(7). For motions to dismiss under this provision, “[i]nitially, the sole criterion is whether the pleading states a cause of action, and if from its four corners factual allegations are discerned which taken together manifest any cause of action cognizable at law.” *Guggenheimer v. Ginzburg*, 43 N.Y. 2d 268, 275 [1977].

Discussion

Defendants have moved to dismiss all of Plaintiff’s claims except for the breach of contract cause of action and the claim for an equitable accounting. They argue that 1) the breach of fiduciary duty, unjust enrichment, and conversion claims are duplicative of the breach of contract claim; 2) the constructive trust claim fails to adequately allege essential elements; 3) documentary evidence conclusively establishes a defense necessitating dismissal of the claims against defendant Steve Samandarov; and 4) the claims asserted against WAFI 45-01 Realty, LLC, AMI Capital Holdings, LLC, Jones Holdings, LLC, and McMahon Commercial Real Estate LLC (collectively, the “Non-Managing Members”) fail to allege essential elements. Plaintiff opposes. For the reasons that follow, the second cause of action is dismissed except as against defendants AB Capstone LLC and SS Northern Blvd, LLC, the third and fourth causes of action are dismissed as duplicative of the breach of contract claim, and the sixth cause of action is dismissed for failure to seek non-monetary remedies.

The Breach of Fiduciary Duty Claim Is Not Duplicative

In the amended complaint, Plaintiff plead a claim for breach of fiduciary duty. While the amended complaint does not clarify which defendants the claim is pled against, Plaintiff admits that non-managing members do not have a fiduciary duty to Plaintiff. Defendants move to dismiss this claim entirely as duplicative of the breach of contract claim. Generally speaking, a tort claim is not duplicative of a breach of contract claim when the defendant “has breached a

duty of reasonable care distinct from its contractual obligations, or when it has engaged in tortious conduct separate and apart from its failure to fulfill its contractual obligations.” *New York Univ. v. Cont’l Ins. Co.*, 87 N.Y.2d 308, 316 [1995].

Plaintiff argues that the Managing Defendants breached a statutory duty of care that is separate from the one laid out in the Operating Agreement. They also argue that the allegations that the Managing Defendants “grossly mismanaged” the company, failing to perform due diligence regarding prospective tenants for the property owned by the company, engaging in self-dealing, and failing to protect the company’s assets all constitute tortious conduct separate and apart from the contractual obligations. Much of the conduct that forms the base of the breach of fiduciary duty claim also forms the base of the breach of contract claim, such as the execution of a Forbearance Agreement and Deed in Lieu of Foreclosure, which is alleged to be a breach of both the operating agreement and a breach of the duty to avoid self-dealing. But the allegations of gross mismanagement, and specifically the failure to conduct due diligence, have not been alleged to be a breach of the operating agreement. Therefore, while there is significant overlap between the claims, Plaintiff adequately alleged violations of fiduciary duty beyond the alleged breaches of the operating agreement.

*Plaintiff Does Not Plead a Claim for Breach of Fiduciary Duty Against the Non-
Managing Members*

Because the amended complaint did not specify which defendants the causes of action were pled against, Defendants have moved to dismiss the breach of fiduciary duty claim to the extent it is pled against the non-managing defendants. Plaintiff concedes this point and limit their claim to the managing defendants AB Capstone LLC and SS Northern Blvd, LLC. In their opposition papers, Plaintiff attempts to “re-style” the second cause of action as including a

separate claim for aiding and abetting a breach of fiduciary duty by the individual defendants Babaev and Samandarov. But such a claim is not pled in the amended complaint. It should properly have been brought by seeking leave to amend the complaint rather than by pleading a claim in opposition papers. Therefore, to the extent that the second cause of action is pled against defendants other than the managing defendants, it should be dismissed.

The Conversion Claim Is Duplicative of the Breach of Contract Claim

Defendants argue that the conversion claim in the third cause of action is also duplicative of the breach of contract claim. Plaintiff admits that the same actions form the basis for both claims but argue that the availability of punitive damages for a claim of conversion, as compared to breach of contract, allows for both claims to be pled. Plaintiff cites to a single non-binding federal case in support of this proposition. But even in that case, the federal district court noted that under New York law, “a plaintiff must allege acts that are unlawful or wrongful as distinguished from acts that are a mere violation of contractual rights” in order to sustain a conversion claim. *Fraser v. Doubleday & Co.*, 587 F.Supp.1284, 1288 [S.D.N.Y. 1984]. Because Plaintiff here does not allege any acts that would distinguish the conversion claim from the breach of contract claim, the third cause of action should be dismissed as duplicative.

The Unjust Enrichment Claim Is Duplicative

The fourth cause of action pleads unjust enrichment. Defendants have moved to dismiss this claim as also duplicative of the breach of contract claim. Plaintiff argues that the claim is valid as against the non-managing members, who are not parties to the agreement and who saw their ownership interests increased as a result of the allegedly unlawful dilution of Plaintiff’s interests. But when an express contract governs the actions complained of, quasi-contract claims are barred even for non-parties to the agreement. *Norcast S.ar.l. v. Castle Harlan, Inc.*, 147

A.D.3d 666, 668 [1st Dept. 2017]; *see also A.N.L.Y.H. Invs. LP v. JDS Principal Highline LLC*, 231 A.D.3d 570, 572 [1st Dept. 2024] (holding that “quasi-contractual claims based on the same subject matter will not lie, even against a nonparty to the promissory note”). The actions forming the basis for the unjust enrichment claim are the dilutions of Plaintiff’s shares and the execution of forbearance agreements in exchange for a release of personal guaranties. These same two actions are pled in the breach of contract claim. Therefore, the fourth cause of action is duplicative, even as pled against non-parties to the operating agreement.

The Constructive Trust Claim Fails to Plead Non-Monetary Remedies

Plaintiff’s sixth cause of action requests a constructive trust due to alleged gross mismanagement and unjust enrichment. Defendants have moved to dismiss this claim as insufficiently pled. For a constructive trust to be established, “there must be provided: (1) a confidential or fiduciary relation, (2) a promise, express or implied, (3) a transfer made in reliance on that promise, and (4) unjust enrichment.” *Bankers Sec. Life Ins. Soc’y v. Shakerdge*, 49 N.Y.2d 939, 940 [1980]. Defendants argue that the elements are pled in a conclusory fashion. Specifically, they argue that the allegation that the managing defendants promised to act as loyal fiduciaries to the company is conclusory. Plaintiff points to the operating agreement and New York LLC law, which impose a fiduciary duty on managing members. By accepting the role as manager, the managing defendants here clearly made a promise to act as loyal fiduciaries.

Defendants also argue that the claim must be dismissed as a constructive trust is only available where a money damages remedy would be inadequate. *See, e.g., Evans v. Winston & Strawn*, 303 A.D.2d 331, 333 [1st Dept. 2003] (holding that claim for a constructive trust is properly dismissed when “it does not otherwise appear that the legal remedy of damages will be inadequate”). Plaintiff argues that equitable relief would be required in order to make them

whole. But none of the equitable relief referred to in their papers is sought in their amended complaint, which seeks “a constructive trust, plus attorneys’ fees, expenses, costs and disbursements.” When the remedy sought is money damages, dismissal of a claim for a constructive trust is proper. *See, e.g., Basal Trading & Sons Ltd. v. M&G Diamonds, Inc.*, 212 A.D.3d 551, 553 [1st Dept. 2023]. Here, Plaintiff has not sought relief outside money damages, making dismissal of the constructive trust claim proper.

Claims Against Individual Defendant Samandarov Have Been Mooted

Defendants have also moved to dismiss all claims asserted against the individual defendant Steve Samandarov on the basis of documentary evidence. Because the conversion claim was dismissed on other grounds, and because the aiding and abetting a breach of fiduciary duty was not pled in the complaint and cannot be pled in the opposition papers, the Court need not reach the issue of whether Samandarov’s control of an LLC that took on management duties is sufficient to sustain a claim against him individually. Accordingly, it is hereby

ADJUDGED that the motion to dismiss is granted in part; and it is further

ORDERED that the third, fourth, and sixth causes of action are dismissed in their entirety; and it is further

ORDERED that the second cause of action is dismissed to the extent that it is pled against defendants other than defendants AB Capstone LLC and SS Northern Blvd, LLC; and it is further

ORDERED that defendants shall file an answer to the amended complaint not more than 20 days following service of this Order with notice of entry.

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7/18/2025

DATE

LYLE E. FRANK, J.S.C.

CHECK ONE:

CASE DISPOSED

NON-FINAL DISPOSITION

GRANTED

DENIED

GRANTED IN PART

OTHER

APPLICATION:

SETTLE ORDER

SUBMIT ORDER

CHECK IF APPROPRIATE:

INCLUDES TRANSFER/REASSIGN

FIDUCIARY APPOINTMENT

REFERENCE