

RIA R Squared, Inc. v Shinhan Sec. Co., Ltd.

2025 NY Slip Op 33055(U)

July 31, 2025

Supreme Court, New York County

Docket Number: Index 659538/2024

Judge: Anar Rathod Patel

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

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<p>RIA R SQUARED, INC.</p> <p style="text-align: center;">Plaintiff,</p> <p style="text-align: center;">- v -</p> <p>SHINHAN SECURITIES CO., LTD.,</p> <p style="text-align: center;">Defendant.</p>	<p>INDEX NO. <u>659538/2024</u></p> <p>MOTION DATE <u>04/08/2025</u></p> <p>MOTION SEQ. NO. <u>002</u></p> <p style="text-align: center;">DECISION + ORDER ON MOTION</p>
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HON. ANAR RATHOD PATEL:

The following e-filed documents, listed by NYSCEF document number (Motion 002) 38–55, 60–65 were read on this motion to DISMISS.

Plaintiff RIA R Squared, Inc. (“Plaintiff” or “RIA”) is an asset manager organized under Delaware law, with its principal place of business in New York, New York. NYSCEF Doc. No. 1 (“Compl.”) at ¶ 14. Defendant Shinhan Securities Co., Ltd. (“Defendant” or “SSC”), is a financial services company organized under the laws of the Republic of South Korea, with its principal place of business in Seoul, South Korea, and is a wholly owned subsidiary of SSC Financial Group. *Id.* at ¶ 15.

Relevant Factual¹ and Procedural History

Global Master Securities Lending Agreement (GMSLA) and Supplemental Lending Agreement (SLA)

On January 25, 2019, RIA and SSC entered into a Global Master Securities Lending Agreement (“GMSLA”) and a Supplemental Lending Agreement for Securities Lending (“SLA”) (together, the “Agreements”). *Id.* at ¶¶ 2, 31; NYSCEF Doc. No. 14 (“GMSLA” and “SLA” or “Agreements”). The SLA supplemented the GMSLA and superseded the GMSLA where provisions conflicted. Compl. at ¶ 30–32; NYSCEF Doc. No. 55 (“Def. Mem. of Law”) at ¶ 7. Pursuant to the GMSLA, “the terms of each Loan shall be agreed [upon] prior to the commencement of the relevant Loan either orally or in writing (including any agreed form of electronic communication) and confirmed in such form and on such basis as shall be agreed between the Parties.” Compl. at ¶ 32; GMSLA at § 3.

¹ The facts are taken from the Complaint and are accepted as true for the purpose of this Motion to Dismiss.

Pursuant to the Agreements, SSC began lending securities to RIA in exchange for collateral, and a fee. Compl. at ¶ 32. Upon the termination of each loan, RIA would return the securities to SSC, and SSC would return the collateral. *Id.* During 2019, RIA claims SSC loaned them \$250 million in securities through a series of individual loans. *Id.* However, in 2020, SSC allegedly faced reduced liquidity on their balance sheet which Plaintiff attributes to both COVID-19, and an as-yet undisclosed regulatory investigation involving business dealings of SSC. *Id.* at ¶¶ 3, 35–40. Endeavoring to increase their liquidity, SSC contacted RIA and allegedly requested a recall of previously lent securities to meet their counterparty margin demands. *Id.*

Plaintiff alleges Sam San Hyuk Kim, a senior executive at SSC, contacted David Kang, CEO of RIA, in February 2020 to negotiate an early return of \$94 million in loaned securities. *Id.* at ¶¶ 4–5, 40. Although RIA claims it was under no contractual obligation for an early return of the securities, Kim allegedly framed the transaction as a “special request” which would negatively impact their business relationship if RIA refused. *Id.* at ¶ 5. RIA also alleges that SSC threatened to use their substantial influence to discourage other South Korean financial entities from engaging in future business with RIA. *Id.*

SSC admits it requested the return of \$94 million in securities from RIA out of a total of outstanding \$250 million in loans between the parties. NYSCEF Doc. No. 55 (Def. Mem. of Law) at ¶ 15. However, SSC states that although it had the contractual right to recall “any particular loan at any time under Section 8 of the GMSLA” it chose to frame the discussion as a “request.” NYSCEF Doc. No. 55 (Def. Mem. of Law); GMSLA at § 8.1.

The Securities Delivery Agreement (SDA)

After lengthy negotiations, RIA alleges it entered into a “Securities Delivery Agreement” (“SDA”) between SSC and RIA. *Id.* at ¶¶ 6, 43–44, 51, 79. Pursuant to the SDA, RIA agreed to the early return of \$47 million of borrowed securities to SSC on April 28, 2020. *Id.* As consideration, SSC agreed to: (1) re-lend the original \$47 million in securities, and extend an additional \$100 million in securities to RIA by May 30, 2020; (2) suspend RIA’s spread payments to SSC on current loans for six months; and (3) discount spread payments on future loans. *Id.* at ¶¶ 6, 48–49. Kang alleges he originally expressed to SSC his concerns about their future financial ability to perform under the agreed upon SDA terms. *Id.* at ¶¶ 7, 47. Kang claims SSC provided assurance that they could satisfy all future obligations under the SDA because they expected an increase in assets under management in May 2020. *Id.*

RIA alleges that SSC knew it would be financially unable to fulfill the SDA obligations throughout the negotiation process and misrepresented their capacity to perform. *Id.* at ¶¶ 8, 10. RIA specifically alleges that during the relevant period, SSC knew they were under investigation by South Korean Authorities regarding their role in a financial fraud commonly known as the “Lime Asset Management Scandal.” *Id.* at ¶ 36. Ultimately, regulators required SSC to repay “hundreds of millions” to investors and imposed “hundreds of millions of dollars” in fines and sanctions. *Id.* Despite previous assurances to RIA that their business would grow, SSC “ultimately admitted” it was “endeavoring to restrict its business” during the investigation “to offset its inevitable financial impact.” *Id.*

RIA alleges it delivered \$47 million dollars of securities to SSC on April 28, 2020, but SSC failed to re-lend either the original \$47 million, or the additional \$100 million in securities by May 30, 2020, pursuant to the SDA. *Id.* at ¶¶ 9–10. In subsequent telephone conversations and e-mail correspondence, SSC allegedly admitted to breaching the SDA, acknowledged RIA’s financial loss due to the breach, and agreed to negotiate a resolution. *Id.* at ¶ 11. Kim allegedly acknowledged SSC’s obligation pursuant to the SDA coupled with various assurances, including an e-mail, stating that SSC has “capacity to continue the GMSLA deal” and they are “looking forward for the great relationship and we are working on the points . . . lets [*sic*] overcome this crisis.” *Id.* at ¶¶ 52–53. Kim wrote that SSC will satisfy “any and all past statements and representations”, and acknowledged that RIA “performed above and beyond to assist SSC with any request made by SSC’s internal reporting and financial need”, and thanked RIA for an “exemplary track record and performance of all obligations.” *Id.* at ¶ 55.

Defendant SSC disputes the existence of either a written or verbal SDA, and provides the GMSLA, e-mails and letters between the parties, and termination notices as documentary evidence to substantiate that the decision to return the securities to SSC was a non-contractual and voluntary business decision by RIA. Def. Mem. of Law at ¶ 2; NYSCEF Doc. Nos. 14–28 (Def. Exs. 1–15).

The “Statement of Facts”

RIA claims the relationship and trust between the parties continued to deteriorate over time. Compl. at ¶¶ 55–57. SSC would not fulfill any of its obligations under the SDA. *Id.* Additionally, RIA claims that SSC improperly attempted to terminate the GMSLA and recall outstanding unmatured loans. *Id.* at ¶ 57. On February 15, 2022, counsel for RIA provided written notice to SSC detailing breaches of contract with respect to the Agreements, and the SDA. *Id.* at ¶ 58. The notice documented improper attempts by SSC to terminate the GMSLA. *Id.* RIA claims that on March 11, 2022, the parties entered into an agreement (the “Statement of Facts” or “SOF”) whereby they agreed to maintain the “status quo” of their business relationship and informally work towards a resolution of the alleged breaches of contract, until either (1) the parties resolved the dispute; or (2) the parties agree the market is no longer impacted by COVID and has “returned to normalcy.” *Id.* at ¶¶ 11, 59–61. Pursuant to the SOF, RIA alleges that SSC promised they would not terminate the GMSLA until there was a resolution of the disputes. Compl. at ¶ 69. RIA claims this SOF provided them “assurance it would ultimately receive the securities it was owed” because it “described SSC’s improper efforts to terminate the GMSLA” and “documented SSC’s continuing failure to lend the previously promised \$147 million of securities to RIA.” *Id.* at ¶¶ 60–61.

However, in December 2022, Kim requested another favor from RIA *via* e-mail. *Id.* at ¶ 64. RIA alleges that SSC wanted to “partially or fully wind-up our current GMSLA transaction” because SSC was closing their Prime Brokerage Department “due to market conditions.” *Id.* RIA claims SSC admitted the breach by stating in an e-mail that it “would have liked to fulfil[l] our transactional agreement and obligation of returning the \$50MM notional and ramping up an additional \$100MM notional” and they “acknowledge that due to SSC’s failure to perform, RR has been negatively impacted on many economic levels. And unfortunately, our management would not allow us to fulfil[l] our obligations per transaction.” *Id.*

SSC claims the SOF was not a contract, nor was it intended to memorialize the alleged SDA, or any prior agreement or contract between the parties. NYSCEF Doc. No. 66 (Def. Reply) at ¶ 15.

The Draft Agreement

Despite the anticipated closure of SSC's Prime Brokerage business, RIA alleges that the parties continued to negotiate future securities lending. *Id.* at ¶ 65. “[S]ometime prior to November 13, 2023”, SSC offered to lend \$750 million of repo-eligible securities in three separate tranches “during 2024 and 2025” worth “\$100 million, \$250 million, and \$400 million, respectively” to offset damages that RIA suffered from the prior contractual breaches. *Id.* at ¶¶ 65–66, 85. “[U]pon reaching agreement”, counsel for RIA prepared a “draft ‘Securities Loan Confirmation’ document spelling out the terms of the \$750M Loan Agreement” (the “Draft Agreement”). *Id.* at ¶ 66. RIA alleges that “Mr. Kang sent the document to Mr. Kim, who immediately signed on behalf of SSC and returned the signed copy to RIA.” *Id.* Originally, SSC denied that it either executed the “draft agreement” or agreed to any of its terms. Def. Mem. of Law at ¶ 25.

SSC denies custody of “any record of ever executing this agreement or agreeing to any of the terms.” *Id.* SSC submits an unsigned copy of the at-issue document titled “CONFIRMATION OF SECURITIES LOAN TRANSACTION (“SECURITIES LOAN CONFIRMATION”)” containing a header on each page titled “W&S Discussion Draft: 18 October 2023”. NYSCEF Doc. No. 21 (“Draft Agreement”). Subsequent to SSC's Motion to Dismiss being marked fully submitted to the Court, its counsel filed a letter on June 9, 2025 to correct certain facts in its Memorandum of Law. NYSCEF Doc. No. 67 (“SSC's Letter”). After additional discovery and communications with their client, counsel advised that SSC did, in fact, execute the Draft Agreement and returned it *via* e-mail to RIA. *Id.* The Draft Agreement signed by Sam San Hyuk Kim on behalf of SSC and the e-mail are attached to Defendant's Letter. *Id.* at 6–11. However, SSC claims that RIA never returned a countersigned version. *Id.* at 2. RIA added context to SSC's failure to locate the e-mail after performing a “reasonable search.” NYSCEF Doc. No. 70 (“Plaintiff's Sur-reply”). Although SSC's Letter disclosed its current possession of the signed Discussion Draft, it failed to disclose that it was not discovered through additional searches by SSC, but that RIA provided it to SSC on May 23, 2025 in advance of SSC's Reply Mem. of Law filed on May 27, 2025. NYSCEF Doc. No. 70 at 5–6; NYSCEF Doc. No. 69 at 1 (“Plaintiff's Letter to the Court”).

The Relationship Between the Parties Continues to Deteriorate

On August 28, 2024, counsel for RIA issued a demand letter to SSC seeking either specific performance for the re-lending of the \$47 million in securities, the lending of the additionally promised \$100 million in securities, and remediation for RIA's losses due to the breach of the SDA, or a negotiated settlement. *Id.* at ¶ 67. In response, SSC asserted that (1) it had not breached any contracts, (2) it lacked any outstanding obligations to RIA, and (3) RIA was in breach of the GMSLA for failing to pay fees on outstanding loans. *Id.* at ¶ 68, 70. In a show of good faith, RIA claims it paid the disputed fees, but SSC nevertheless declared an event of default, and contacted RIA's custodial bank, BNP Paribas (“BNP”), to assert rights under the SLA demanding BNP turn

over RIA’s collateral to SSC. *Id.* at ¶¶ 12–13, 70–73. RIA alleges that BNP “froze” all securities in the collateral account, and ultimately terminated their role as RIA’s custodian due to SSC’s improper demands and false communications to BNP regarding the alleged default. *Id.* SSC argues that RIA’s non-payment of fees due on existing loans created an automatic event of default. Def. Mem. of Law at ¶¶ 11–13, 26. Therefore, SSC claims it had the right, pursuant to the SLA at §§ 7 and 13, to direct BNP, as collateral agent, to “take legal possession of the **custodial account** and the **custodial securities**” pursuant to a self-executing irrevocable power of attorney SSC held over the accounts. *Id.*; GMSLA and SLA (emphasis in original); NYSCEF Doc. No. 19 (“BNP Default Letter”). SSC contends that RIA falsely told BNP that the GMSLA was no longer valid and therefore, SSC had no contractual authority to take possession or control of the collateral securities. *Id.* at ¶ 26. Due to the factual dispute, RIA claims BNP placed a hold on its access to the account, causing RIA to default on an unrelated transaction. Compl. at ¶ 72–73. BNP eventually terminated its role as securities collateral custodian and provided RIA with 90-days to find another custodial provider. *Id.*

Procedural Posture

Plaintiff RIA commenced this action on December 9, 2024 by filing a Summons and Complaint (NYSCEF Doc. No. 1) alleging five counts against Defendant SSC: (1) breach of the GMSLA, SLA, and SDA contracts; (2) breach of an agreement to lend RIA \$750 million in securities; (3) fraudulent inducement by making misrepresentations to RIA regarding the financial condition of SSC that caused RIA to enter into the SDA; (4) breach of the implied covenant of good faith and fair dealing under the GMSLA, SLA, and SDA; and (5) declaratory judgment ordering that (i) the GMSLA and SLA govern; (ii) SSC improperly terminated the GMSLA, and therefore, it remains in full force and effect; and (iii) RIA did not default on borrowing or coupon fee payments due to SSC for outstanding loans pursuant to the GMSLA and SLA. *Id.* at ¶¶ 75–112. SSC filed the present Motion to Dismiss (Mot. Seq. 002) all five counts in the Complaint (NYSCEF Doc. No. 38) on April 8, 2025. RIA filed a Memorandum of Law in Opposition on April 28, 2025. (NYSCEF Doc. No. 65). SSC filed a Reply Memorandum of Law on May 27, 2025. (NYSCEF Doc. No. 66). The Court granted RIA’s request to file a Sur-reply (NYSCEF Doc. No. 69), which RIA filed on June 17, 2025. (NYSCEF Doc. No. 70).

Legal Analysis

“A party may move for judgment dismissing one or more causes of action asserted against him on the ground that a defense is founded upon documentary evidence.” CPLR § 3211(a)(1). Documentary evidence, “such as an unambiguous contract,” must “conclusively establish[] a defense to the asserted claims as a matter of law.” *Goldman v. Metropolitan Life Ins. Co.*, 5 N.Y.3d 561, 571 (2005) (internal citations omitted). A motion to dismiss under CPLR § 3211(a)(1) “may be appropriately granted only where the documentary evidence utterly refutes [the] plaintiff’s factual allegations, conclusively establishing a defense as a matter of law.” *Goshen v. Mutual Life Ins. Co. of New York*, 98 N.Y.2d 314, 326 (2002) (internal citations omitted). At the motion to dismiss stage of litigation, defendant must show the evidence “resolves all factual issues as a matter of law and conclusively disposes of the plaintiff’s claim.” *Hohwald v. Farm Fam. Cas. Ins. Co.*, 155 A.D.3d 1009, 1010 (2d Dept. 2017).

On a motion to dismiss brought pursuant to CPLR § 3211(a)(7), “pleadings are to be afforded a liberal construction, allegations are taken as true, the plaintiff is afforded every possible inference, and a determination is made only as to whether the facts as alleged fit within any cognizable legal theory.” *CSC Holdings, LLC v. Samsung Elecs. Am., Inc.*, 146 N.Y.S.3d 17, 18 (2021) (internal citations omitted). Nevertheless, “[d]ismissal of the complaint is warranted if the [movant] fails to assert facts in support of an element of the claim, or if the factual allegations and inferences drawn from them do not allow for an enforceable right of recovery.” *Connaughton v. Chipotle Mexican Grill, Inc.*, 75 N.E.3d 1159, 1162 (N.Y. 2017) (internal citations omitted). Allegations consisting of “bare legal conclusions” or factual claims that are “inherently or flatly contradicted by documentary evidence are not entitled” to the presumption that the facts plead are presumed to be true. *Stuart Lipsky, P.C. v. Price*, 215 A.D. 102, 103 (1st Dept. 1995). Courts will grant a motion to dismiss where the plaintiff states a cognizable cause of action but fails to assert a material fact necessary to meet an element of the claim. *See, e.g., Arnon Ltd v. Beierwaltes*, 3 N.Y.S.3d 31, 33 (1st Dept. 2015).

A. *Count I - Plaintiff Successfully Pleads Breach of Contract as to the SDA, GMSLA, and SLA*

To state a claim for breach of contract, a plaintiff must allege “the existence of a contract, the plaintiff’s performance thereunder, the defendant’s breach thereof, and resulting damages.” *Second Source Funding, LLC v. Yellowstone Cap.*, 144 A.D.3d 445, 445–46 (1st Dept. 2016). To plead the existence of a contract, a party must “establish an offer, acceptance of the offer, consideration, mutual assent, and an intent to be bound.” *Kowalchuk v. Stroup*, 61 A.D.3d 118, 121 (1st Dept. 2009).

A breach of the SDA would simultaneously breach the GMSLA and SLA contracts governing all individual security lending transactions between RIA and SSC. Therefore, the Court first conducts an analysis of SSC’s breach of contract claim under the SDA.

Breach of the SDA

(i) *The Complaint Successfully Pleads the SDA was a Contract*

SSC argues that RIA’s breach of contract claim fails because the SDA was a non-contractual request by SSC to return \$94 million in borrowed securities that RIA partially fulfilled by returning \$47 million in borrowed securities to SSC. Def. Mem. of Law at ¶ 2. SSC claims RIA, in return, made a non-contractual request for a return favor and asked SSC to re-lend the \$47 million in securities, plus an additional \$100 million in securities at an undefined period in the future. *Id.* It is undisputed that numerous discussions and negotiations regarding the securities lending relationship generally, and the \$47 million transaction specifically, took place between February 2020 and August 2024, when RIA issued a demand letter to SSC due to the SDA breach. Def. Mem. of Law at ¶ 25; Compl. at ¶ 67. SSC characterizes the numerous e-mail and telephonic exchanges between the parties during this period as “negotiations” about future business transactions, which lacked the specificity of an offer or an intent by SSC to be bound. Def. Mem. of Law at ¶ 2.

SSC provides three e-mail threads written at various times both before and after RIA's return of the \$47 million in securities to bolster its argument that there was no contract between the parties. The e-mails, however, do not provide any conclusive or unambiguous statements or evidence supporting SSC's position, but simply contain facts that are undisputed. Def. Mem. of Law at ¶¶ 39–42. Pl. Mem. of Law in Opp'n at 8. The e-mails confirm SSC's ask was a "special request", that SSC characterized the request as a "favor", and that the original request was for early termination of \$94 million in securities. NYSCEF Doc. 43–45. Both parties contend negotiations involving the SDA took place over the course of years (generally, between April 2020—when RIA returned the \$47 million in securities—and August 2024 when RIA issued the demand letter). Compl. ¶¶ 53–67. The e-mail threads, however, lack the full context of the approximately four-and-a-half years of dialogue between RIA and SSC that occurred *via* both e-mail and phone calls. Compl. at ¶ 11; Def. Mem. of Law at ¶ 2.

Additionally, Defendant's exhibits fail to meet the burden under § 3211(a)(1) that documentary evidence must resolve all factual matters as a matter of law. NYSCEF Doc. Nos. 40–54. When, as here, a defendant selectively submits a handful of ambiguous documents meant to raise factual issues, the case should survive the motion to dismiss. *Calpo-Rivera v. Siroka*, 144 A.D.3d 568, 568 (1st Dept. 2016) (invoices and e-mails in a breach of contract case must be conclusive and will not provide a basis for a motion to dismiss pursuant to CPLR § 3211(a)(1) if additional discovery may reveal relevant facts).

SSC further argues the SDA lacks necessary material terms such as a termination date, spread amount, and collateral type. Def. Mem. of Law at ¶ 37; *see Mangold Mate, LLC v. Metabook, Inc.*, LEXIS 2553 at *5 (N.Y. Cnt'y Sup. Ct. Aug. 9, 2024) (a complaint must contain allegations concerning each of the material elements necessary to sustain recovery under a viable legal theory). However, even if there was a question as to the specificity or materiality of an omitted term or provision, it is one of fact which cannot be resolved on a motion to dismiss. *S.E.C. v. Rorech*, 673 F. Supp. 2d 217, 224 (S.D.N.Y. 2009) (whether terms are material in a credit default swap are questions of fact). Although SSC argues the SDA does not contain certain contractual provisions that could be considered "material terms" such as, *inter alia*, identification of collateral and loan spread, RIA alleges that, pursuant to the GMSLA, the parties had broad latitude to contractually enter securities lending and borrowing transactions taking "such form and on such basis as shall be agreed between the Parties." GMSLA at § 3; Def. Mem. of Law at ¶ 37; Pl. Mem. of Law in Opp'n at 14.

Due to the informality of prior negotiations and transactions, this Court must conduct a fact-intensive determination of what terms are "material" to a contract between the parties, and the moment when each negotiation ripened into an actual contract. Therefore, the Court cannot determine, as a matter of law that the return of the \$47 million of securities was a favor, as argued by SSC, and not an enforceable contract.

Taking all allegations as true, RIA successfully pleads the SDA was an oral contract made pursuant to the GMSLA and SLA. Compl. at ¶¶ 6, 48–49, 60–61. The Complaint pleads (1) an offer characterized as a "special request"; (2) an acceptance of the offer as demonstrated by RIA's return of \$47 million in securities; (3) consideration consisting of specific notional amounts of securities that SSC promised to lend in the future, and advantageous terms for RIA with respect to future fees on outstanding loans; (4) mutual assent of the parties that occurred through e-mails and

telephonic discussions; and (5) an intent to be bound that is evidenced by communications of the parties and RIA's early return of securities. *Id.* RIA further pleads that, although not required, the SDA oral terms were later codified in writing within the SOF. *Id.*

The Complaint Successfully Pleads Breach of the SDA

SSC argues the breach of contract claim fails, because the negotiations surrounding the purported SDA amounted only to an agreement to agree and, as a matter of law, promises which are made to “work something out” are “indefinite and insufficient to support [a] conclusion that there was a meeting of the minds.” *Ernst Steel Corp. v. Horn Const. Div.*, 104 A.D.2d 55 (4th Dept. 1984). However, the Complaint offers greater specificity than a general promises between the parties including specific future notional amounts, a deadline date, current fee waivers, and future fee reductions. Compl. at ¶ 6, 48–49. The historic lack of contractual formality between the parties is consistent with the alleged discussions which led to the formation of a contract.

Nothing in the e-mails provided by SSC “utterly refutes” any aspect of the SDA itself, or its breach as required by *Goshen*. Instead, the e-mails provided by SSC strengthen RIA's breach of contract claim—*e.g.*, RIA refers to the “special circumstance” request and complains about the breach by telling SSC the transaction was based on “extreme market circumstance of SIC's² immediate needs”, and points out that “even major big banks, regardless of the market conditions perform based on contract.” NYSCEF Doc. No. 44; *see also* Compl. at ¶¶ 6, 48–49. RIA also alleges Kim sent an e-mail to RIA in December 2022 apologizing for not fulfilling their obligation to return “the \$50MM notional and ramping up an additional \$100MM notional” due to the market environment and acknowledging that RIA has been negatively impacted. Compl. at ¶ 64; Pl. Mem. of Law in Opp'n at 11–12. Further, in the same e-mail, SSC acknowledges their failure to perform and claimed management “would not allow us to fulfil [*sic*] our obligations per transaction.” *Id.* The Complaint successfully alleges (1) the existence of a detailed contractual agreement, (2) RIA's performance; (3) SSC's breach by not “fulfil[ling their] obligations”; and (4) damages to RIA. *Id.*

Breach of the GMSLA and SLA

It is also undisputed that the GMSLA and SLA are the governing contracts that control each lending transaction between the parties. Given the Court's finding that RIA successfully pleads a breach of the SDA contract, it logically follows that SSC simultaneously breached the GMSLA and SLA which contained provisions impacting the terms of the \$47 million transaction, and the promise by SSC to re-lend securities and provide fee relief on existing and future loans.

E-mails provided by SSC between Kang and King discussing the return of securities militates RIA's position that the GMSLA and SLA were breached. On April 28, 2020, Kang advises “Sam [King] and Jung” that “as per the GMSLA contract ‘Supplemental Lending Agreement for Securities Lending’, paragraph 5. [] [L]ending party (SIC) must give prior notice of 30 days in order to terminate the GMSLA trade. As we both know, SIC did not provide a request to return the 94MM within the requested timeline.” NYSCEF Doc. No. 44 (Def. Ex. 5). Defendant also submits documentary evidence consisting of transaction termination notices

² Shinhan Investment Corp (“SIC”) was renamed Shinhan Securities Co. Ltd. (“SSC”), effective October 2022. Compl. at ¶16.
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arguing that RIA breached the GMSLA and SLA by failing to return securities in a timely fashion. NYSCEF Doc. Nos. 22–27 (Def. Exs. 9–14); Pl. Mem. of Law in Opp’n at 21. However, whether RIA breached the Agreements is irrelevant at this stage in the litigation.

The Court finds that RIA has adequately plead (1) the existence of the GMSLA, SLA, and SDA contracts; (2) RIA’s performance by returning the \$47 million in securities; (3) a breach of those contracts when SSC failed to adhere to the obligations in the SDA; and (4) reputational and financial damages to RIA due to the breach.

Therefore, the Court DENIES Defendant’s Motion to Dismiss Count I of the Complaint pursuant to CPLR §§ 3211(a)(1) and (a)(7).

B. Count II - Plaintiff Successfully Pleads Breach of Contract as to the \$750 Million Securities Loan

New York statute of frauds mandates that all contracts which cannot be performed within a year must be in written form (“SOF”). N.Y. Gen. Obl. Law § 5–701. RIA does not dispute that the alleged \$750 million securities lending agreement with SSC required three tranches of lending to occur at different times during 2004 and 2005. Compl. at ¶¶ 65–66. SSC originally argued that the breach of contract claim with respect to the alleged \$750 million securities loan should be dismissed pursuant to the SOF because, according to RIA, SSC “signed and immediately returned the draft agreement (Compl. ¶ 66), yet Defendant has no record of ever executing this agreement or agreeing to any of the terms.” Def. Reply at ¶¶ 3, 25, 17. Although SSC now claims to have the draft agreement signed by Kang, SSC continues to claim they have no record of any fully executed agreement between the parties and that the Complaint does not allege the existence of one. Def. Mem. of Law at ¶ 49.

The party seeking to enforce a contract holds the “burden of proving the existence, terms, and validity of a contract.” *Paz v. Singer Co.*, 151 A.D.2d 234, 235 (1989). Although RIA fails to allege the existence of a fully executed contract for the \$750 million loan in the Complaint, RIA does rely on provisions in the GMSLA, which allow for a binding verbal agreement between the parties. Pl. Mem. of Law in Opp’n at 20. In their opposition brief, RIA argues that SSC watermarked the loan agreement, meaning “the Statute of Frauds does not apply.” *Id.* RIA does not reference any statute, case law, or document that would exempt this transaction from the Statute of Frauds. SSC argues that because the allegation of a watermark is first mentioned in the Plaintiff’s Memorandum of Law in Opposition, this Court cannot consider it as a factual allegation without an affidavit accompanying the Memorandum of Law. *See Start Elevator, LLC v. Macombs Place, LLC*, 2018 WL 4000423, at *2 (Bronx Cnty. Aug. 21, 2018) (where Plaintiff provides affidavits in opposition to a motion to dismiss, the court may consider additional facts contained therein to remedy any defects in the complaint).

Setting aside Plaintiff’s Memorandum of Law in Opposition, the Court determines on the remaining record that RIA has adequately plead (1) the existence of the \$750 million securities lending contract given the latitude for verbal agreements discussed *supra*; (2) performance by RIA because it stood ready to engage in the transaction and fulfill its obligations under the contract; (3) a breach of the contract because SSC never made the three-tranche loan; and (4) financial damages

resulting from the breach. Additionally, the inability of SSC to locate a key document later provided by RIA militates further discovery.

Therefore, the Court DENIES Defendant's Motion to Dismiss Count II of the Complaint pursuant to CPLR §§ 3211(a)(1) and 3211(a)(7).

C. Count III - Plaintiff Successfully Pleads Fraudulent Inducement in the SDA Contract

To state a claim of fraudulent inducement, a plaintiff must “assert (1) the misrepresentation of a material fact, which was (2) known by the defendant to be false, (3) intend to be relied on when made, and that (4) there was justifiable reliance and (5) resulting injury.” *Braddock v. Braddock*, 60 A.D.3d 84, 86 (1st Dept. 2009). “Opinions of value or future expectations [may] not form a basis for fraudulent misrepresentation.” *Canelle v. Russian Tea Room Realty LLC.*, WL 287750, at *5 (S.D.N.Y. Feb. 27, 2022). Parties do not make “actionable representations of fact when predicting a future event with no knowledge of whether or not the event may occur.” *Cimen v. HQ Cap. Real Estate L.P.*, 277A.D. 3d 587, 587 (1st Dept. 2024) (internal citation omitted).

SSC argues that—without more—an expression of expectation of a future business event is not sufficient to support a claim of fraudulent misrepresentation. Def. Mem. of Law at ¶ 55. However, RIA successfully pleads the first two prongs of *Braddock* by alleging that it had concerns about SSC's future financial ability to satisfy the obligations in the SDA. Compl. at ¶ 47, 49. RIA alleges that SSC made false assurances of financial capacity to re-lend securities to RIA by materially misrepresenting that they “expected” to increase their assets under management by May 2020. *Id.* Simultaneously, SSC is alleged to have knowingly reduced its exposure to counterparties because of the Lime Asset Management Scandal. Compl. at ¶¶ 36, 47. Countering SSC's argument that any alleged statements were only an expression of expectation, RIA pleads more than simple expectation trends, aspirational statements, or projections made by SSC. Compl. at ¶¶ 36, 94. The Complaint alleges that SSC knew their financial capacity would not increase, but actually decrease, and SSC was actively reducing business during the negotiations with RIA. *Id.* RIA's claim that that SSC knew it was under investigation and “ultimately admitted” it was restricting business and not ramping up assets establishes an inference that misrepresentation of a material fact occurred. RIA satisfies the third and fourth prongs of *Braddock* because it would not have entered the SDA absent the assurance provided to them by RIA upon which it justifiably relied. Compl. at ¶ 49. The final prong of *Braddock* is also satisfied because RIA sustained financial and reputational damage by breaking trades with other counterparties to facilitate the early return of \$47 million of securities to SSC. Compl. at ¶ 50.

Therefore, the Court DENIES Defendant's Motion to Dismiss Count III of the Complaint pursuant to CPLR § 3211(a)(7).

Based on the foregoing, the Court need not address the arguments Defendant makes under CPLR § 3211(a)(1), as the Court found *supra* that the SDA is an enforceable contract.

D. Count IV - Plaintiff Fails to Plead Breach of Implied Covenant of Good Faith and Fair Dealing in the GMSLA, SLA, and SDA Contracts

A claim for breach of the implied covenant of good faith and fair dealing is duplicative of a breach of contract and should be dismissed when “both claims arise from the same facts and seek identical damages.” *Amcan Holdings, Inc. v. Canadian Imperial Bank of Com.*, 70 A.D.3d 423, 426 (1st Dept. 2010). Implicit in every contract is “a promise of good faith and fair dealing that is breached when a party acts in a manner that ... would deprive the other party of receiving the benefits under their agreement.” *Sorenson v. Bridge Capital Corp.*, 52 A.D.3d 265, 267 (1st Dept 2008). This implied 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.’” *Dalton v. Educational Testing Serv.*, 87 N.Y.2d 384, 389 (1995). To the extent the claim “merely restates [a] breach of contract claim[,]” it shall be dismissed. *Brook v. Peconic Bay Med. Ctr.*, 152 AD3d 436, 438 (1st Dept 2017).

SSC claims the action for breach of the implied covenant of good faith and fair dealing should be dismissed because it is duplicative of Counts I and II for breach of contract, arise from the same facts, and seek the same damages. Def. Mem of Law at ¶ 59. RIA argues SSC violated its reasonable expectations under the GMSLA, SLA, and SDA by sending a notice to RIA on or about January 18, 2022, terminating the GMSLA. Pl. Mem. of Law in Opp’n at 22. Without a valid GMSLA and SLA, the \$147 million securities lending transaction SSC agreed to under the SDA could not occur. Compl. ¶¶ 57,107; Pl. Mem. of Law in Opp’n at 23. Actions by a plaintiff to frustrate the ability of a defendant to recover under a contract under certain circumstances can violate the implied covenant of good faith and fair dealing. *See AEA Middle Mkt. Debt Funding, LLC v. Marblegate Asset Mgmt. LLC*, 214 A.D.3d 111, 134 (2023) (plaintiff adequately pleads a breach of covenant of good faith and fair dealing because the complaint alleges defendant frustrated the ability to recover under a credit agreement). However, here, the claim under Count IV arise from the same facts, the same circumstances, and request the same relief which, pursuant to *Brook*, merely restates the breach of contract claims in Counts I and II.

Therefore, the Court GRANTS Defendant’s Motion to Dismiss Count IV of the Complaint pursuant to CPLR § 3211(a)(7).

E. Count V - Plaintiff Fails to Plead the Requirements for a Declaratory Judgment

The Court’s discretion in awarding declaratory relief is inappropriate if an adequate remedy is available, or when hypothetical issues are presented. *See James v. Alderton Dock Yards*, 256 N.Y.298, 305 (1931) (a declaratory judgment is discretionary and dependent upon facts and circumstances rendering it useful and necessary); *Jem Caterers of Woodbury, Ltd. v. Woodbury Jewish Ctr.*, 2012 WL 1557281 at *9 (denying declaratory judgment when there is not a justiciable or actual controversy and when other remedies, such as breach of contract, are available).

Here, RIA requests an order declaring (i) the GMSLA and SLA govern the dispute between RIA and SSC regarding any securities trading; (ii) SSC improperly terminated the GMSLA on January 18, 2022; (iii) the GMSLA remains in full force and effect, notwithstanding SSC’s purported termination of it on January 18, 2022, or any subsequent terminations; and (iv) RIA did not default on its obligations to SSC with respect to borrowing or coupon payments. Compl. at ¶¶ 111–112. These declaratory judgment applications are duplicative of the relief sought in Counts I

and II for breach of contract. RIA’s remedy is in contract law and not declaratory relief as sought here. Additionally, RIA’s request for an order determining that the GMSLA and SLA govern any securities trading between the parties is not only over-broad, but operates as an advisory opinion because it looks to this Court to rule on an abstract issue of a “trade” that is not grounded in fact, as opposed to the specific and detailed trading transactions appropriately plead in the Complaint. *United Water New Rochelle, Inc. v. City of New York*, 275 A.D.2d 464, 466 (2d Dept. 2000).

Accordingly, the Court GRANTS Defendant’s Motion to Dismiss Count IV of the Complaint pursuant to CPLR § 3211(a)(7).

The Court has considered the remaining contentions of the parties and finds them to be unavailing. Upon the foregoing, it is hereby:


ORDERED that the Motion to Dismiss the Complaint (Mot. Seq. 002) by Defendant Shinhan Securities Co., LTD. is GRANTED in part, and DENIED in part, as set forth herein; and it is further

ORDERED that the Defendant’s Motion to Dismiss Counts I (Breach of GLSMA, SLA, and SDA contracts), II (Breach of \$750 million loan contract), and III (fraudulent inducement regarding the financial condition of SSC) is DENIED; and it is further

ORDERED that the Defendant’s Motion to Dismiss Counts IV (breach of the implied covenant of good faith and fair dealing), and V (request for a declaratory judgment) is GRANTED; and it is further

ORDERED that Defendant submit an answer within twenty (20) days after service of this Decision and Order with notice of entry.

The foregoing constitutes the Decision and Order of the Court.

<p>July 31, 2025</p> <hr style="width: 100%;"/> <p>DATE</p>	 <hr style="width: 100%;"/> <p>ANAR RATHOD PATEL, A.J.S.C.</p>												
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