

**Benlolo v Shabsels**

2025 NY Slip Op 33136(U)

August 19, 2025

Supreme Court, New York County

Docket Number: Index No. 655126/2024

Judge: Kathleen Waterman-Marshall

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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. KATHLEEN WATERMAN-MARSHALL PART 31M**

*Justice*

-----X

JEREMY DAVID BENLOLO,

Plaintiff,

- v -

MICHAEL A. SHABSELS, DAVID A. SHABSELS,  
HIGHLAND PARK PARTNERS LLC, BELMONT  
APARTMENT PARTNERS LLC

Defendant.

-----X

**INDEX NO.** 655126/2024

**MOTION DATE** 12/17/2024

**MOTION SEQ. NO.** 001

**DECISION + ORDER ON  
MOTION**

The following e-filed documents, listed by NYSCEF document number (Motion 001) 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, 36

were read on this motion to/for DISMISS.

This matter was transferred to Part 31 in late January 2025.

Upon the foregoing documents and following off-the-record oral argument, the motion by defendants Michael and David Shabsels (“the Shabsels”), Highland Park Partners LLC (“Highland”) and Belmont Apartment Partners LLC (“Belmont”) to dismiss the complaint, is granted in part. Upon the same record, the cross-motion by plaintiff Jeremy David Benlolo (“Mr. Benlolo”) for a default judgment against David Shabsels, is denied.

**Background**

This action arises out of an alleged real estate deal and brokerage-type relationship, but not a formal written broker agreement. The pertinent facts that follow are derived from the complaint and the submissions on the instant motions.

Mr. Benlolo alleges that, in February 2018, the Shabsels engaged him to locate “high-yield” commercial real estate in Oklahoma for them to acquire, in exchange for an annual salary of \$50,000 and a 20% ownership interest in the corporate entities formed to acquire such commercial properties. According to Mr. Benlolo, he worked exclusively as the Shabsels’ real estate broker between February 2018 and 2020.

It is undisputed that there is no formal written brokerage or other agreement. Rather, Mr. Benlolo relies upon various emails to establish the parties’ contract. He cites a February 7, 2018 email from Michael Shabsels, stating that Mr. Benlolo would be paid a monthly consulting fee and providing sample offer letters to use in approaching property sellers. He cites February 7, 2019 emails between himself and Michael Shabsels, in which he inquired about his interest in the real estate deal:

Sure but pardon my ignorance in this area, would you kindly advise on what my place is in the structure of this deal?

Much appreciated,  
David

To which Michael Shabsels responded:

David,  
You're going to own 20%.  
Regards,  
Mike

He cites his own June 14, 2019 email to Michael Shabsels, in which he stated, "trying to do my job as buyer broker but I'm in the dark and everyone from sellers [sic] side is calling/texting/emailing me all day long."

Mr. Benlolo alleges that he spent over a year contacting brokers and searching for suitable properties in Oklahoma in reliance upon the Shabsels' representations that he would have a 20% interest in any properties purchased. He ultimately located two Oklahoma apartment complexes, the first at 4215 SE 53<sup>rd</sup> Street (known as "The Commons"), and the second at 1800 North Rockwell Avenue (known as "The Belmont"). The Shabsels granted him a 20% ownership interest in two LLCs formed to be the purchasing entities for those properties, to wit: 4215 SE 53<sup>rd</sup> Street Real Estate ("53<sup>rd</sup> St.") and 1800 North Rockwell Avenue Real Estate ("North Rockwell"). The Shabsels sent Mr. Benlolo "executed operating agreements listing him as 20% owner" of the purchasing entities, represented to lenders that Mr. Benlolo "was a key principal in the transaction," and Mr. Benlolo submitted financial disclosures and credit applications in this regard.

In September and October 2021, the Shabsels purchased The Commons and The Belmont two Oklahoma, with title taken in the names of Highland and Belmont, entities in which Mr. Benlolo does not have any interest. To date and despite due demand, the Shabsels have not provided Mr. Benlolo with a 20% ownership interest in Highland and Belmont or remitted any distributions to him.

On September 18, 2024, Mr. Benlolo sued to recover amounts allegedly due to him under the parties' real estate venture/brokerage agreement (NYSCEF Doc. No. 1). The complaint asserts causes of action for: (1) breach of contract/specific performance; (2) fraudulent inducement; (3) breach of fiduciary duty; (4) promissory estoppel; and (5) unjust enrichment.

Defendants collectively move to dismiss the complaint upon various grounds. As to Michael Shabsels, dismissal is sought for lack of personal jurisdiction. As to the entire complaint, dismissal is sought upon the grounds that: the claims are barred by the statute of frauds; the fraudulent inducement, breach of fiduciary duty, and promissory estoppel claims are duplicative of the breach of contract claim; the identification of real estate that defendants purchased is too attenuated to support an unjust enrichment claim; and the complaint is so confusing as to fail to state a cause of action.

Mr. Benlolo opposes the motion on the merits and as untimely as to David Shabsels, and cross-moves for a default judgment as against David Shabsels.

### **Motion and Cross-Motion**

#### ***Personal Jurisdiction and Default Judgment***

The personal jurisdiction and timeliness issues are the simplest, and, thus, the first to be resolved. On the main motion, Michael Shabsels argues that the complaint should be dismissed as to him for want of jurisdiction because Mr. Benlolo served him via substitute ("nail and mail") service (CPLR § 308[4])

without first making requisite attempts to serve him personally on the weekend and inquiring with his neighbors as to whether the location was his dwelling place. The Court disagrees.

“There are no rigid standards governing the due diligence requirement for substituted service pursuant to CPLR 308(4)” (*Brafman & Assoc., P.C. v Balkany*, 190 AD3d 453 [1st Dept 2021] quoting *Bank of Am., N.A. v Budhan*, 171 AD3d 622 [1st Dept 2019]). Successive attempts to personally serve a defendant on different days and at different times of the day satisfy the due diligence requirement to allow substituted nail and mail service (*id.*), which is what occurred in this matter. According to the affidavit of service, the process server attempted personal service over a two-week period on October 15, 21, and 29, 2024 (NYSCEF Doc. No. 4). Notably, Michael Shabsels does not dispute that the location where he was served via alternative service, and where the process server attempted to personally serve him, is his usual place of abode. To the extent that Michael Shabsels cites an Appellate Division, Second Department decision for the proposition that a weekend attempt at personal service is required before resorting to substituted service, this represents a department split and this Court is required to follow the decision of the First Department (*see generally People v Rivera*, 5 NY3d 61 [2005] [Kaye, J. dissenting; FN 2] [“state trial courts are bound to follow existing precedent of a higher court, even though they may disagree”]; *Mountain View Coach Lines, Inc. v Storms*, 102AD2d 663 [2d Dept 1984] [Second Department declining to follow contradictory Third Department law]).

*Consequently, the complaint as to Michael Shabsels is not subject to dismissal for want of jurisdiction, and remains viable as to said defendant.*

Highland and Belmont improperly raise, for the first time in reply, the argument that the complaint should be dismissed as to them for want of jurisdiction in that there are no affidavits showing service upon them (*see Fed. Nat’l Mortg. Ass’n v NB 1168 Realty, LLC*, 234 AD3d 938, 939 [2d Dept 2025] [“The function of reply papers is to address arguments made in opposition to the position taken by the movant and not to permit the movant to introduce new arguments in support of, or new grounds for the motion.”]). However, as Mr. Benlolo had an opportunity to address this reply argument by way of his attorney’s February 3, 2025 letter (NYSCEF Doc. No. 34), the Court will consider it (*Fed. Nat’l Mortg. Ass’n, 234 AD3d at 939* [“An argument raised for the first time in reply should not be considered unless there is an opportunity to respond and submit papers in surreply.”]).

Service upon a foreign limited liability company authorized to conduct business in New York is governed by CPLR § 311-a, which requires service upon “an officer, director, managing or general agent” or “any other agent authorized by appointment or by law to receive service,” and Limited Liability Company Law § 303, which requires the pleadings to be personally delivered to and left with the secretary of state. The record is devoid of any proof that Mr. Benlolo served Highland and Belmont, which are both Delaware limited liability companies, in any manner required by either statute. There are no affidavits of service for either Highland or Belmont; there are only affidavits of service for the Shabsels. Mr. Benlolo’s attempt to cure this glaring omission by purporting to file an amended affidavit of service for David Shabsels (NYSCEF Doc. No. 33), which states that David was served – by substituted service upon his wife – “individually and as principal” of Highland and Belmont, is insufficient (*see generally Gleizer v Am. Airlines, Inc.*, 30 AD3d 376 [2d Dept 2006] [“The receptionist was clearly not an officer, director, managing agent, or cashier of the corporation and there is no evidence that she was an agent authorized by appointment or law to accept service on its behalf”]), and the record lacks any proof that the pleadings were served by delivery to the secretary of state (assuming Highland and Belmont are authorized foreign limited liability companies). Moreover, Mr. Benlolo did not request, pursuant to CPLR § 306-b, an extension of time to serve Highland and Benlolo (*see Henneberry v Borstein*, 91 AD3d 493 [1st Dept 2012] [306-b “authorizes an extension of time for service in two discrete situations: ‘upon good cause shown’ or ‘in the interest of justice’”])

*Consequently, the complaint as against Highland and Belmont is dismissed for lack of personal jurisdiction.*

On the cross-motion, Mr. Benlolo asserts that David Shabsels is in default and therefore, the request to dismiss as to him is untimely. The Court disagrees. Mr. Benlolo served this David Shabsels pursuant to CPLR § 308(2), which provides that service is completed 10 days after the filing of the affidavit of service. Here, the affidavit of service was filed on November 7, 2024, making service complete 10 days later on November 17, 2024. Under CPLR § 320(a), David Shabsels was required to appear, answer, or move to dismiss within 30 days after November 17, 2024. The instant dismissal motion was filed on December 17, 2024, the 30<sup>th</sup> day after completion of service; therefore, it is timely.

Assuming, *arguendo*, that the motion was not timely as to David Shabsels, any untimeliness is *de minimis* and is excused. There is a strong preference for adjudicating matters on the merits (*Cayra M. v Fotis B.*, 147 AD3d 479 [1st Dept 2017] [“petitioners were not prejudiced by the slight delay, and disposition of cases on the merits is preferred as a matter of public policy”]; *Pagan v Estate of Anglero*, 22 AD3d 285 [1st Dept 2005] [“There is a strong preference in the law favoring the disposition of cases on their merits”]).

*Consequently, David Shabsels request for dismissal of the complaint is timely made, and Mr. Benlolo is not entitled to a default judgment against said defendant.*

#### ***Dismissal Under CPLR 3211(a)(7) and (5)***

As the complaint is now subject to dismissal as against Highland and Belmont, the Court considers the remaining arguments raised in the dismissal motion as they apply to the Shabsels only.

The law on dismissal under CPLR § 3211 is clear and well-settled: claims should be liberally construed, facts presumed to be true, and the pleading accorded the benefit of every possible favorable inference (*see e.g. Leon v Martinez*, 84 NY2d 83 [1994]; *Anderson v Edmiston & Co.*, 131 AD3d 416, 417 [1st Dept 2015]). The motion must be denied if from the four corners of the pleadings “factual allegations are discerned which taken together manifest any cause of action cognizable at law” (*Polonetsky v Better Homes Depot*, 97 NY2d 46, 54 [2001]; *R.H. Sanbar Proj., Inc. v Gruzen Partnership*, 148 AD2d 316, 318 [1st Dept 1989] [dismissal not warranted when “allegations are given the benefit of every possible inference, a cause of action exists”]).

A complaint should not be dismissed so long as, “when the plaintiff’s allegations are given the benefit of every possible inference, a cause of action exists,” and a plaintiff may cure potential deficiencies in its pleading through affidavits and other evidence (*R.H. Sanbar Projects v Gruzen Partnership*, 148 AD2d 316, 318 [1st Dept 1989]). However, bare legal conclusions and factual allegations which are inherently incredible or contradicted by documentary evidence are not presumed to be true (*Mark Hampton, Inc. v Bergreen*, 173 AD2d 220 [1st Dept 1991]).

At the outset (and as more fully addressed below), the complaint is not so vague as to fail to state a cause of action or so ambiguous that the Shabsels cannot reasonably be required to frame a response. In any event, even if the complaint did suffer such infirmity, the Shabsels could have sought a more definite statement pursuant to CPLR 3024; they did not.

#### ***Statute of Frauds***

The statute of frauds, embodied in GOL § 5-701, “is designed to protect the parties and preserve the integrity of contractual agreements” (*William J. Jenack Estate Appraisers and Auctioneers, Inc., v Rabizadeh*, 22 NY3d 470, 476 [2013]). In pertinent part, GOL § 5-701(a) provides:

Every agreement, promise or undertaking is void, unless it or some note or memorandum thereof be in writing, and subscribed by the party to be charged therewith, or by his lawful agent, if such agreement, promise or undertaking:

1. By its terms is not to be performed within one year from the making thereof or the performance of which is not to be completed before the end of a lifetime; . . . .

10. Is a contract to pay compensation for services rendered in negotiating . . . the purchase, sale, exchange, renting or leasing of any real estate or interest therein, . . . “Negotiating” includes procuring an introduction to a party to the transaction or assisting in the negotiation or consummation of the transaction. This provision shall apply to a contract implied in fact or in law to pay reasonable compensation but shall not apply to a contract to pay compensation to an auctioneer, an attorney at law, or a *duly licensed real estate broker* or real estate salesman. [emphasis added]

The Appellate Division, First Department has repeatedly applied subsections (a)(1) and (a)(10) of the statute of frauds separately; that is, where an agreement is exempted under subsection (a)(10) as a brokerage agreement, it may nevertheless be separately voidable under subsection (a)(1) as an agreement not capable of performance within one year (*Real Estate Economic Resources, Inc. v Armendariz*, 162 AD2d 303, 304 [1st Dept 1990]; *LHWS LLC v S.L. Green Realty Corp.*, 206 AD3d 411 [1st Dept 2022]; *LHWS LLC v S.L. Green Realty Corp.*, 225 AD3d 450 [1st Dept 2024] *see also Elhanani v Kuzinez*, 84 Misc3d 1245[A] [Sup. Court NY County December 13, 2024] [Reed, J.]). Where a writing is required to satisfy the statute of frauds, “[i]t is well established that the statutorily required writing need not be contained in one single document, but rather may be furnished by piecing together other, related writings” (*William J. Jenack Estate Appraisers and Auctioneers, Inc.*, 22 NY3d at 477).

It is undisputed that there is no written agreement between or among the parties. Thus, the question is whether Mr. Benlolo’s contract claims are barred by the statute of frauds. Mr. Benlolo argues that the brokerage agreement exemption contained in GOL § 5-701(a)(10) applies and the absence of a written agreement does not bar his contract claims. He further contends that, even if the agreement must be in writing, the parties’ emails and the operating agreements of 53<sup>rd</sup> St. and North Rockwell, as pieced together, furnish the necessary writing. On the other hand, the Shabsels argue that, notwithstanding the brokerage agreement exemption, the complaint itself shows that it took more than one year to locate and close on the properties at issue and, therefore, the brokerage agreement was required to be reduced to writing to satisfy GOL § 5-701(a)(1).

Presuming the facts alleged in the complaint to be true, the Court finds that a brokerage type agreement was in place by at least February 2018 – the emails in 2018 and 2019 reveal as much. However, the identification and purchase of the Oklahoma properties was not completed within one year. Indeed, Mr. Benlolo’s own affirmation states that he worked as a real estate broker to procure properties in Oklahoma between “February 2018 and 2020.” Thus, the alleged brokerage agreement, which was not performed within one year, must have be reduced to a writing, or several writings, subscribed to by the parties, containing substantially the whole agreement and all material terms; otherwise, it will violate the statute of frauds (*Kobre v Instrument Sys. Corp.*, 54 AD2d 625, 626 [1st Dept 1976]; *D’Esposito v Gusrae, Kaplan & Bruno PLLC*, 44 AD3d 512 [1st Dept 2007]).

However, the emails in this record do not include substantially the whole agreement between the parties and all of its material terms. As an initial matter, the email chain appears to contain emails

between Mr. Benlolo and Michael Shabsels only, David Shabsels is completely absent from the email chain. The email chain also contains emails to non-parties; the substance of the emails with non-party Michael Edery are hidden (NYSCEF Doc. No. 15 “[Quoted text hidden]”). While the parties discuss Mr. Benlolo’s 20% interest, the entity or entities in which he has a 20% interest is unclear, as are the terms under which the interest is provided. There is no reference in the emails to Highland or Belmont, the entities which purchased the properties. The operating agreements for 53rd St. and North Rockwell do establish plaintiff’s 20% membership interest in those LLCs (NYSCEF Doc. No.12 and 13 at § 11.6), but there is no connection between these entities and the Highland and Belmont. Under these circumstances, instead of containing substantially the whole agreement, the documents do not establish a contract at all, which fails to comply with the statute of frauds (*Kobre*, 54 AD2d at 626 [documents evincing “a contract in terms and conditions different from that which the parties entered into” does not satisfy statute of frauds]).

Mr. Benlolo’s contention that the alleged agreement should be enforced under a partial performance exception fails no better. He cites *Gier v Bussel*, for the proposition that his actions are “unequivocally referable” to the agreement, and thus the agreement should be enforced (188 AD2d 1040 [4th Dept 1992]). However, Mr. Benlolo’s actions are not unequivocally referable to the alleged agreement that he had a 20% interest in Highland and Belmont. The February 7, 2018 email from Michael Shabsels states that Mr. Benlolo would be “consulting for us” with a monthly fee of \$4,166.66 (NYSCEF Doc. No. 22). Stated differently, Mr. Benlolo’s performance may be related to his consulting and monthly fee, not a 20% interest in the final real estate venture. As noted above, the emails do not state that Mr. Benlolo has a 20% interest in Highland or Belmont; on this record, the only discernable corporate interest he has is in 53<sup>rd</sup> St. and North Rockwell. Thus, Mr. Benlolo’s actions are not “unequivocally referable” to the alleged agreement that he be granted 20% interest in Highland and Belmont.

*Consequently, the first cause of action for breach of contract claim is dismissed.*

### ***Fraudulent Inducement***

Given the dismissal of Mr. Benlolo’s breach of contract cause of action, the Shabsels’ request that the second cause of action for fraudulent inducement be dismissed as duplicative of the breach of contract claim, is academic and moot. The complaint otherwise pleads a valid fraudulent inducement claim in that it sufficiently states that the Shabsels “knowingly uttered a falsehood intending to deprive the plaintiff of a benefit and that the plaintiff was thereby deceived and damaged” (*Channel Master Corp. v Aluminum Ltd. Sales, Inc.*, 4 NY2d 403, 406-407 [1958]; *Century 21, Inc. v F.W. Woolworth Co.*, 181 AD2d, 620, 625 [1st Dept 1992] [“The essential elements of an action for fraudulent inducement are the representation of a material existing fact, falsity, scienter, deception and injury.”]). Mr. Benlolo alleges that the Shabsels represented he would have a 20% in the subject Oklahoma real estate venture; that they had no intention of ever providing him with a 20% interest in the real estate venture; that he relied on such misrepresentations to his detriment; and, thus, the Shabsels fraudulently induced him to perform real estate brokerage work.

*Consequently, the second cause of action for fraudulent inducement remains viable.*

### ***Breach of Fiduciary Duty***

Assuming the truth of the allegations in the complaint, the third cause of action for breach of fiduciary duty, is subject to dismissal. It is well-settled that managing members of LLCs owe non-managing members a fiduciary duty (*Pokoik v Pokoik*, 115 AD3d 428, 429). Here, however, assuming the truth of the allegations in the complaint, Mr. Benlolo is not a member of Highland and Belmont. Therefore, the Shabsels, as managing members of said companies, do not owe plaintiff a fiduciary duty.

The Court notes that, although Mr. Benlolo did not seek declaratory relief under CPLR § 3001, he requests, as the remedy on his promissory estoppel claim, a judgment “enforcing Defendants’ promise to grant [him] a 20% membership interest and distributing his pro rata share of revenues.” Should discovery reveal the merit to such remedy – specifically, a judgment declaring that he has a 20% membership interest in Highland and Belmont – Mr. Benlolo may renew his breach of fiduciary duty claim.

*Consequently, the third cause of action for breach of fiduciary duty is dismissed without prejudice to replead upon completion of discovery.*

### ***Promissory Estoppel***

“The elements of a promissory estoppel claim are: (i) a sufficiently clear and unambiguous promise; (ii) reasonable reliance on the promise; and (iii) injury caused by the reliance” (*Castellotti v Free*, 183 AD3d 198, 204 [1st Dept 2016]). Promissory estoppel claims may proceed even when a contract is barred by the statute of frauds “where unconscionable injury results from the reliance placed on the alleged promise” (*id.*).

As noted above, the complaint contains allegations that Mr. Benlolo relied on the Shabsels’ repeated promises that he would receive a 20% ownership interest in the Oklahoma properties he procured and they purchased. It also contains allegations that Mr. Benlolo relied on these promises, continued to perform brokerage services for the Shabsels, refrained from seeking other opportunities and delayed asserting his rights. Consequently, this claim is based on specific representations that plaintiff allegedly relied upon to his detriment (*Castellotti*, 183 AD3d at 204). Triable issues of fact exist as to whether plaintiff has suffered an unconscionable injury; thus, to dismiss the claim at this early pleading stage would be inappropriate (*id.*; citing *Buddman Distribs v Labatt Importers*, 91 AD2d 838, 839 [4th Dept 1982] [unconscionable injury should not be determined on the pleadings]).

*Consequently, the fourth cause of action for promissory estoppel remains viable.*

### ***Unjust Enrichment***

The dismissal of the breach of contract claim on statute of frauds grounds does not bar Mr. Benlolo’s unjust enrichment cause of action to the extent that plaintiff “does not seek to enforce a promise but rather seeks to recover the reasonable value of property or services rendered in reliance on the promise” (*Castellotti*, 183 AD3d at 208 citing *Kearns v Mino*, 83 AD2d 606 [2d Dept 1981]; *Farash v Sykes Datatronics*, 59 NY2d 500, 503 [1983]). Thus, Mr. Benlolo’s unjust enrichment claim may continue; however, recovery must be limited to the reasonable value of his services – it cannot extend to the benefit he alleges he was due under the alleged agreement (*Castellotti*, 183 AD3d at 208 citing *Komolov v Segal*, 117 AD3d 557 [1st Dept 2014] [unjust enrichment precluded where same relief was barred by statute of frauds]).

*Consequently, the fifth cause of action for unjust enrichment remains viable.*

### ***Statute of Limitations***

All of Mr. Benlolo’s claims accrued in September 2021 when the Shabsels failed to memorialize, or grant him, his alleged 20% interest in Highland and Belmont at the real estate closings for The Commons and The Belmont. Thus, the statute of limitations on Mr. Benlolo’s causes of action for fraudulent inducement, promissory estoppel, and unjust enrichment began to run in September 2021, not February 2018. Each of those causes of action have six-year statutes of limitations (*see* CPLR 213 [1], [2], and [8]), and therefore, the complaint – filed on September 18, 2024 – is timely.

*Consequently, the remaining cause of action for fraudulent inducement, promissory estoppel, and unjust enrichment are not barred by the statute of limitations and remain viable.*

**Failure to State a Cause of Action: Absence of Real Estate Broker License**

Although the Shabsels improperly raise, for the first time in reply, the argument that Mr. Benlolo is precluded from recovering any monies on the alleged real estate deal because he is not a licensed real estate broker, the Court will consider the argument as Mr. Benlolo had an opportunity to address it in a letter surreply (NYSCEF Doc. No. 34) (*Fed. Nat'l Mortg. Ass'n, 234 AD3d at 939*). Mr. Benlolo submitted proof of his New York State real estate salesperson license effective during the relevant time period, thus demonstrating the lack of merit to the Shabsels' claim.

Accordingly, it is

**ORDERED** that the cross-motion for a default judgment against David Shabsels is denied; and it is further

**ORDERED** that the complaint as against Highland and Belmont is dismissed for lack of personal jurisdiction; and it is further

**ORDERED** that the motion to dismiss as to the first cause of action, for breach of contract, is granted and that cause of action is dismissed; and it is further

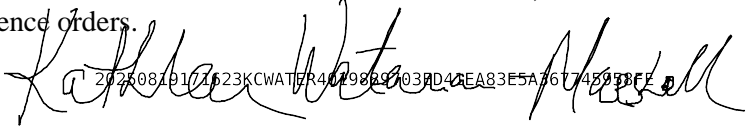
**ORDERED** that the motion to dismiss as to the third cause of action, for breach of fiduciary duty, is granted and that cause of action is dismissed without prejudice to replead at the close of discovery; and it is further

**ORDERED** that the motion to dismiss as to the second cause of action, for fraudulent inducement, and the fourth cause of action, for promissory estoppel, is denied and those causes of action remain viable; and it is further

**ORDERED** that the motion to dismiss as to the fifth cause of action, for unjust enrichment, is denied and that cause of action remains viable with recovery limited to the reasonable value of Mr. Benlolo's services; and it is further

**ORDERED** that the Shabsels shall **answer** the complaint as to the second, fourth, and fifth causes of action no later than **September 12, 2025**; and it is further

**ORDERED** that this matter is scheduled for a **Preliminary Conference on November 19, 2025 at 10:00 am**, in Part 31, 111 Centre Street, Room 623. Counsel are reminded of the Part 31 Rules, specifically those governing conferences and conference orders.



8/19/2025

DATE

KATHLEEN WATERMAN-MARSHALL,  
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