SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF WESTCHESTER

PRESENT: HON. LINDA S. JAMIESON

———————————————————————X

JACK BARDY,

Plaintiff,

-against-

JOSEPH EDWARD BONNEM a/k/a JED BONNEM, PARKWAY COFFEE, LLC d/b/a READY COFFEE and READY COFFEE, LLC,

Defendants.

———————————————————————X

Index No. 55909/2023

DECISION AND ORDER

The following papers numbered 1 to 8 were read on the motion (seq. no. 3) by defendants Joseph Edward Bonnem ("Bonnem"), Parkway Coffee, LLC ("Parkway") and Ready Coffee, LLC ("Ready") (collectively, "defendants") for an Order pursuant to CPLR § 3212 awarding defendants summary judgment dismissing the Verified Amended Complaint (the "Amended Complaint") of plaintiff Jack Bardy ("plaintiff") as a matter of law:

Papers	Numbered
Notice of Motion	1
Affirmations and Exhibits in Support	2
Memorandum of Law in Support	3
Defendants' Statement of Material Facts	4
Affirmations and Exhibits in Opposition	5
Memorandum of Law in Opposition	6

RELEVANT BACKGROUND

Plaintiff commenced this action on January 24, 2023 by filing his Summons and original Complaint. *See* NYSCEF Doc. No. 1. In the Amended Complaint, which was filed on March 30, 2023, plaintiff alleges that Bonnem is an investor who was introduced to plaintiff in October 2016 by a mutual friend when Bonnem was attempting to develop and launch a chain of drive-through coffee establishments. *See* NYSCEF Doc. No. 20 at ¶¶ 1-72. The Amended Complaint alleges that plaintiff is a hospitality industry veteran who has founded, owned and operated many restaurants and other businesses, and that plaintiff and Bonnem entered into a series of negotiations in October and November of 2016 regarding a joint venture between plaintiff and Bonnem to use Ready, which is owned by Bonnem and Parkway, for this drive-through coffee business. *Id.*

It alleges that on November 13, 2016, Bonnem made a written proposal that reflected his discussions with plaintiff, which the parties orally agreed to on November 16, 2016 (the "Agreement"). *Id.* It alleges that the Agreement provides that in exchange for plaintiff working to develop Ready as a drive-through coffee business, plaintiff would be given an option to

purchase a 25% ownership interest in Ready, which plaintiff could acquire in two steps: (1) payment of $180,000.00 for an 18% ownership interest therein after the first drive-through coffee location had opened; and (2) payment for an additional 7% ownership interest in Ready after the third year of Ready's drive-through coffee business, with Ready to be valued at $5 million for purposes thereof. *Id.* It alleges that the Agreement included other terms, including that Ready would reimburse plaintiff for travel expenses, and that Bonnem subsequently reimbursed plaintiff for travel expenses in accordance with the Agreement. *Id.*

The Amended Complaint alleges that in connection with the Agreement, plaintiff trusted and relied upon Bonnem as the majority partner in Ready, and that plaintiff devoted substantial time and effort to develop Ready, despite receiving no compensation for such work. *Id.* It alleges that after Ready opened its first drive-through coffee location in February 2019, which was immediately successful, plaintiff advised Bonnem that, pursuant to the Agreement, he was ready to purchase his initial 18% ownership interest in Ready. *Id.* It alleges, however, that Bonnem claimed for the first time that the parties had never made a deal and that plaintiff's efforts over the past several years to develop Ready were being done solely on a "volunteer"

basis. *Id.* The Amended Complaint alleges that Bonnem's claim is false and fraudulent, as plaintiff makes his living by developing hospitality businesses, and would never invest so much time, effort and resources to develop Ready as a "volunteer" for the sole benefit of defendants. *Id.* It further alleges that plaintiff and Bonnem had no prior relationship and that the Agreement was reached within one month of their being introduced for this business purpose, and that there would be no plausible reason for plaintiff to gift such substantial benefits to Bonnem. *Id.* It alleges that Bonnem has breached the Agreement and defrauded plaintiff of his agreed-upon option to obtain an ownership interest in Ready, which has become very profitable; and that Bonnem, Ready, and Parkway have wrongfully obtained and kept substantial benefits at plaintiff's expense while improperly denying plaintiff his agreed-upon ownership interest in Ready. *Id.*

Based upon the foregoing allegations, the Amended Complaint asserts: (1) a first cause of action for breach of contract against Bonnem; (2) a second cause of action for unjust enrichment against all defendants; (3) a third cause of action for quantum meruit against all defendants; (4) a fourth cause of action for breach of fiduciary duty against Bonnem; (5) a fifth cause of action for constructive trust against all defendants;

and (6) a sixth cause of action for equitable accounting against all defendants. *See* NYSCEF Doc. No. 20 at ¶¶ 73-110.

By Decision and Order dated May 26, 2023 (the "May 2023 Decision"), the Court denied defendants' motion (seq. no. 1) to dismiss the Amended Complaint. *See* NYSCEF Doc. No. 47. Without opining on whether plaintiff would ultimately prevail on the merits of his claims, the Court held that the Record then before it did not warrant CPLR § 3211(a)(5) dismissal of the first three causes of action due to the Statute of Frauds, and that plaintiff is entitled to plead his quasi-contract claims as an alternative to the breach of contract claim. *Id.* The Court further held that plaintiff had stated valid fourth, fifth and sixth causes of action such that CPLR § 3211(a)(7) dismissal of those claims was unwarranted. *Id.*

As the parties approached the completion of discovery in late 2024, the Court issued a Decision and Order dated November 14, 2024 denying plaintiff's motion (seq. no. 2) to further amend his pleading to add non-party Ready, Inc. as an additional defendant herein. *See* NYSCEF Doc. No. 116. In relevant part, the Court held that it "finds that given the nature of this action, it makes more sense to determine first whether plaintiff succeeds in his claims. If plaintiff prevails at trial, then he

may commence a new action to ascertain the relationship between [Ready] and [Ready, Inc.]." *Id.*

A Trial Readiness Order was thereafter issued on December 10, 2024, and plaintiff filed a Note of Issue and Certificate of Readiness for Trial on December 27, 2024. *See* NYSCEF Doc. Nos. 118, 120. Defendants thereafter moved (seq. no. 3) for an Order pursuant to CPLR § 3212 awarding them summary judgment dismissing all six claims in the Amended Complaint as a matter of law. *See* NYSCEF Doc. Nos. 126-178.[1] Defendants contend that the first cause of action should be dismissed because, *inter alia*, no contract was ever formed; plaintiff did not perform his obligations under the purported Agreement; and the Statute of Frauds nonetheless bars enforcement thereof. *See* NYSCEF Doc. No. 127. Defendants also argue that the quasi-contractual claims in the second and third causes of action should be dismissed as duplicative of the first cause of action, and are further subject to dismissal because plaintiff has not established damages. *Id.* Defendants further assert that the fourth through sixth causes of action should be dismissed because the parties do not have a fiduciary relationship. *Id.*

[1] Certain materials submitted on this motion were redacted and/or filed under seal in accordance with this Court's Order dated February 4, 2025. *See* NYSCEF Doc. No. 180.

Plaintiff opposes the motion. *See* NYSCEF Doc. Nos. 181-276. He argues, *inter alia*, that triable issues of fact regarding the parties' formation of the Agreement preclude dismissal of the first cause of action, which claim is not barred by the Statute of Frauds. *See* NYSCEF Doc. No. 276. Plaintiff further asserts that the second and third causes of action sounding in quasi-contract are not duplicative; and that because there exist triable issues of fact regarding plaintiff's damages, those claims should survive defendants' summary judgment motion. *Id.* Plaintiff also contends that the Record on this motion reflects the existence of triable issues of fact concerning the parties' fiduciary relationship, such that the fourth, fifth and sixth causes of action should not be dismissed pursuant to CPLR § 3212. *Id.*

THE SUMMARY JUDGMENT STANDARD

"Summary judgment is a drastic remedy, to be granted only where the moving party has tendered sufficient evidence to demonstrate the absence of any material issues of fact and then only if, upon the moving party's meeting of this [*prima facie*] burden, the non-moving party fails to establish the existence of material issues of fact which require a trial of the action." *Vega v Restani Constr. Corp.*, 18 NY3d 499, 503 (2012), *quoting Alvarez v Prospect Hosp.*, 68 NY2d 320, 324 (1986). "On a motion

for summary judgment, facts must be viewed in the light most favorable to the non-moving party." *Vega*, 18 NY3d at 503.

Accordingly, "summary judgment is appropriate where only one conclusion may be drawn from the established facts" (*see Jones v Saint Rita's R.C. Church*, 187 AD3d 727, 792 [2d Dept 2020]), or where a cause of action and/or the type of damages sought "fails as a matter of law." *See Ramos v Howard Indus., Inc.*, 10 NY3d 218, 224 (2008) (reversing the denial of summary judgment where a plaintiff's cause of action "fails as a matter of law"); *accord BBCN Bank v 12th Ave. Rest. Group Inc.*, 150 AD3d 623, 624 (1st Dept 2017) (holding that the Supreme Court should have granted summary judgment dismissing a cause of action that "fails as a matter of law").

THE FIRST THREE CAUSES OF ACTION

The first cause of action for breach of contract[2] against Bonnem hinges upon the central allegation that "Bonnem and Bardy formed an agreement that, *inter alia*, provided that Bardy had an Option to purchase a 25% ownership interest in Ready Coffee, which he could acquire in two steps: (i) payment of $180,000.00 for an 18% interest, which would be due after the first location opened; and (ii) an additional 7% after the third year, to be

[2] "The essential elements of a breach of contract cause of action are the existence of a contract, the plaintiff's performance under the contract, the defendant's breach of that contract, and resulting damages." *Blank v Petrosyants*, 203 AD3d 685, 688 (2d Dept 2022).

purchased at a valuation of $5 million." *See* NYSCEF Doc. No. 20 at ¶¶ 73-79.

The Court in its May 2023 Decision held that this claim survived defendants' CPLR § 3211 motion based upon: (1) Bonnem's November 13, 2016 email to plaintiff that proposed the terms of a potential contract squarely in line with the above-referenced Agreement; (2) plaintiff's allegation that he orally accepted this offer on November 16, 2016; and (3) "emails between plaintiff and Bonnem from November 2016 through April 2019 discussing and/or describing plaintiff's efforts in developing Ready." *See* NYSCEF Doc. No. 47 at pp. 6-9. However, the Court emphasized that such determination was made in the context of the liberal standards governing a CPLR § 3211 motion, and was made "without opining regarding whether plaintiff may ultimately prevail on the merits of this claim." *Id.*[3] To that end, the Court in its May 2023 Decision cited *Gedula 26, LLC v Lightstone Acquisitions III LLC*, 150 AD3d 583, 583 (1st Dept 2017) for the proposition that "dismissal of the breach of contract claim would be premature, since discovery may reveal documents that

[3] *See Porcelli v Key Food Stores Co-Operative, Inc.*, 44 AD3d 1020, 1021 (2d Dept 2007) (stating that "[w]hether the complaint will later survive a motion for summary judgment, or whether the plaintiff will ultimately be able to prove its claim, is irrelevant to the determination of a pre-disclosure CPLR 3211 motion to dismiss").

support plaintiff's allegation that both parties accepted the terms set forth in an internal email." *Id.* at pp. 10-11.[4]

Having reviewed the parties' submissions on this summary judgment motion, the Court determines that discovery did not reveal documentary evidence supporting plaintiff's claim that the parties entered into the Agreement. Accordingly, the first cause of action should be dismissed as a matter of law.

Specifically, defendants have established *prima facie* entitlement to summary judgment dismissing plaintiff's breach of contract claim by demonstrating that the parties never specified, let alone agreed upon, the essential terms of the Agreement described in the Amended Complaint, or any other binding contractual agreement with respect to Ready.[5] *See* NYSCEF Doc. Nos. 128-178. Defendants' submissions include, *inter alia*, affirmations from Bonnem and Stephens Dunne ("Dunne"), the "mutual friend" referenced in the Amended Complaint that

[4] Although it need not reach the issue herein, the Court in its May 2023 Decision also rejected defendants' Statute of Frauds argument seeking CPLR § 3211(a)(5) dismissal of the breach of contract claim on the ground that the Agreement is unenforceable because it could not have been performed within one year as required by N.Y. Gen. Oblig. Law § 5-701(a)(1). *See* NYSCEF Doc. No. 47 at pp. 9-11.

[5] Plaintiff and Parkway entered into a non-disclosure agreement on October 7, 2016 prior to discussing Bonnem's business idea, but it is undisputed that this was strictly for purposes of confidentiality and did not comprise any type of agreement to enter into a business relationship. *See* NYSCEF Doc. No. 139.

introduced plaintiff and Bonnem for business purposes,[6] as well as deposition testimony from plaintiff and Bonnem and numerous emails exchanged among the parties at relevant times. *Id*.

These submissions collectively demonstrate that, *inter alia*, (1) there was no written acceptance of the November 13, 2016 email that plaintiff alleges to constitute the Agreement; (2) there is no written partnership agreement, nor any similar agreement signed by either plaintiff or Bonnem; and (3) no contemporary emails, text messages, telephone calls, memoranda, notes, or any other documents reference the parties' alleged November 16, 2016 telephone discussion, and nor do they refer to an agreement that such call produced, as alleged by plaintiff. *See* NYSCEF Doc. Nos. 128-178. Indeed, Dunne avers that he spoke with both plaintiff and Bonnem on the same date as that alleged telephonic conversation, and "there was no mention of any agreement for [plaintiff] to become an equity owner of Ready Coffee" at that time or at any time thereafter. *See* NYSCEF Doc. No. 130 at ¶¶ 16-17.

Accordingly, defendants have established, *prima facie*, that that the parties never agreed upon the essential terms of the Agreement or of any other contract. *See* NYSCEF Doc. Nos. 128-

[6] Dunne was an employee of Ready from 2016 to 2022 and worked closely with Bonnem on various aspects of the business both before and after its launch. *See* NYSCEF Doc. Nos. 129, 130.

178; *see also Hempel v Wise*, 224 AD3d 574, 575 (1st Dept 2024) (affirming summary judgment dismissing a counterclaim for breach of contract and noting that "a party's breach of contract allegations must demonstrate 'the essential terms of the parties' purported contract, including the specific provisions of the contract upon which liability is predicated'"), *quoting Matter of Sud v Sud*, 211 AD2d 423, 424 (1st Dept 1995); *Greene v Rachlin*, 154 AD3d 814, 816 (2d Dept 2017) (holding that summary judgment was warranted where "there was no meeting of the minds to form a binding oral contract" and "the email did not include the essential terms"); *Finkel v Firestone*, 102 AD3d 735, 737 (2d Dept 2013) (affirming CPLR § 3212 dismissal of a breach of contract claim and finding that no partnership existed where the record presented "outstanding issues between the parties as to the terms of the partnership, including the amount of time the plaintiff would devote to the partnership"); *Silber v New York Life Ins. Co.*, 92 AD3d 436, 439 (1st Dept 2012) (holding that "[p]laintiff's failure to show that the parties agreed to definite terms is fatal to his claim of a prior oral agreement" and finding that "there was no 'meeting of the minds' constituting the formation of a contract between the parties").

In opposition, plaintiff has failed to cite a triable issue of fact that would warrant denial of defendants' motion for

summary judgment dismissing the first cause of action. Indeed, plaintiff's submissions entirely fail to demonstrate or even raise a triable issue of fact concerning whether there was a "meeting of the minds" between plaintiff and Bonnem. Therefore, defendants are awarded summary judgment dismissing the first cause of action pursuant to CPLR § 3212. *See* NYSCEF Doc. Nos. 181-275; *see also Hempel*, 224 AD3d at 575 (affirming summary judgment dismissing a breach of contract counterclaim where "[d]efendants fail to support these conclusory allegations with specific facts demonstrating how the Sharing Agreement was breached, either in their counterclaim or in the affidavit submitted in support of their opposition to the underlying motion"); *Petkanas v Petkanas*, 191 AD3d 708, 712 (2d Dept 2021) (holding that "the defendants showed as a matter of law that no 'meeting of the minds' occurred, and that no enforceable contract was formed . . . Therefore, the defendants were entitled to summary judgment dismissing the first and fourth causes of action . . . which sought relief on the basis of an alleged breach of contract"); *Kelley v Bryan Ins. Agency, Inc.*, 176 AD3d 1042, 1045-1046 (2d Dept 2019) (affirming the CPLR § 3212 dismissal of a breach of contract claim and stating that "[s]ince the parties never came to a meeting of the minds as to an essential term of the proposed agreement . . . there was no

binding contract"); *Gleitman v Zorbas*, 164 AD3d 660, 660 (2d Dept 2018) (finding that summary judgment dismissing a breach of contract claim was warranted "[s]ince the parties never came to a meeting of the minds as to an essential term of the proposed agreement, [and] there was no binding contract").

However, the Record on this motion reflects the existence of at least triable issues of fact concerning whether plaintiff devoted substantial time and effort to develop Ready Coffee for defendants' benefit despite receiving no salary or other compensation for his work. As such, plaintiff's quasi-contractual claims in the second and third causes of action[7] should not be dismissed as a matter of law. *See* NYSCEF Doc. Nos. 181-275. In particular, plaintiff's submissions demonstrate triable issues of fact regarding plaintiff's wholly unpaid efforts to develop Ready Coffee between 2016 and 2019, including, *inter alia*, (1) plaintiff's efforts to identify and recruit key personnel; (2) plaintiff's work on branding for Ready Coffee; (3) plaintiff's retention of an advertising firm

[7] Regarding the second cause of action, "[t]he elements of a cause of action to recover for unjust enrichment are (1) the defendant was enriched, (2) at the plaintiff's expense, and (3) that it is against equity and good conscience to permit the defendant to retain what is sought to be recovered." *Travelsavers Enters. v Analog Analytics, Inc.*, 149 AD3d 1003, 1006 (2d Dept 2017). Concerning the third cause of action for quantum meruit, "the plaintiff must prove (1) the performance of services in good faith, (2) the acceptance of the services by the person to whom they were rendered, (3) an expectation of compensation therefor, and (4) the reasonable value of the services." *Gould v Decolator, Cohen & DiPrisco, LLP*, 197 AD3d 1242, 1243 (2d Dept 2021).

to promote Ready Coffee; (4) plaintiff's effort to draft and revise employee handbooks and/or manuals for Ready Coffee; (5) plaintiff's work in creating Ready Coffee's menu and offerings; and (6) plaintiff's efforts in using his various business contacts to serve as resources for Ready Coffee, often at favorable price points. *See* NYSCEF Doc. Nos. 181-275.

Defendants dispute that they benefitted from plaintiff's efforts, and assert that plaintiff "produced largely useless and plagiarized work, caused substantial delays in various projects, and never contributed to onsite management or operations." *See* NYSCEF Doc. No. 127 at pp. 17-22. However, these factual issues are to be resolved at trial, and certainly do not warrant an award of summary judgment based upon the Record on this motion.

Moreover, without opining on plaintiff's likelihood of success on his quasi-contract claims at trial, the Court agrees with plaintiff that it would appear highly unusual that plaintiff, who earns his living by developing hospitality businesses, would gift his experience and labor to Bonnem – whom he had just met – while receiving no compensation for his efforts. *Cf. Alayoff v Alayoff*, 112 AD3d 564, 566 (2d Dept 2013) (noting that "defendant's act of allowing the plaintiff to live in the apartment rent- and maintenance-free . . . might

reasonably be explained by other factors, such as the parties' familial relationship").

Based upon the foregoing, triable issues of fact regarding plaintiff's furnishing of services for defendants' benefit without receiving compensation preclude summary judgment on the second and third causes of action, and fatally undercut defendants' contention that the quasi-contract claims should be dismissed due to plaintiff's purported failure to establish damages. *See* NYSCEF Doc. Nos. 181-275; *see also Estate of Uddin v Miah*, 229 AD3d 764, 766-767 (2d Dept 2024) (holding that where "the plaintiffs raised triable issues of fact as to whether . . . Sufian expended sufficient money, labor, and time in the property to develop an equitable interest . . . the Supreme Court should have denied that branch of the defendant's cross-motion which was for summary judgment dismissing" an unjust enrichment claim); *P360 Spaces LLC v Orlando*, 160 AD3d 561, 562 (1st Dept 2018) (finding that "[t]he court properly denied summary judgment on plaintiff's unjust enrichment claim in that there were issues of fact as to whether it was 'against equity and good conscience' to permit defendants to retain the monies and benefits obtained from the use of the space"); *see also Rubin v Napoli Bern Ripka Shkolnik, LLP*, 228 AD3d 595, 596 (1st Dept 2024) (holding that the "Supreme Court also properly found

triable issues of fact precluding summary judgment on the quantum meruit claim, based on plaintiff's performance of work for the law firms").

Furthermore, as it did in the May 2023 Decision, the Court again rejects defendants' argument that the quasi-contractual claims should be dismissed as duplicative of the breach of contract claim. In addition to the key fact that the Court has dismissed the first cause of action herein and the unjust enrichment and quantum meruit claims therefore cannot possibly be duplicative thereof, the claims are in any event not identical or duplicative. As the Court noted in its May 2023 Decision:

> [A] plain reading of the Amended Complaint demonstrates that the quasi-contract claims, which are asserted against all three defendants, are distinguishable from the first cause of action for breach of contract against Bonnem, and are not duplicative thereof. While the breach of contract claim seeks specific performance of the Agreement and "other damages" in connection with Bonnem's alleged breach thereof (*see* NYSCEF Doc. No. 20 at ¶¶ 73-79), the unjust enrichment claim cites the "benefits of [plaintiff's] labor" as the foundation of plaintiff's theory of damages, while the quantum meruit claim similarly seeks "compensat[ion] for the services [plaintiff] provided to Bonnem and Ready Coffee." *See* NYSCEF Doc. No. 47 at pp. 12-13.

Accordingly, the Court perceives no credible basis for dismissing plaintiff's distinct unjust enrichment and quantum

meruit claims as being somehow duplicative of the dismissed breach of contract claim. *See At Last Sportswear, Inc. v Byron*, 226 AD3d 551, 551 (1st Dept 2024) (noting that "[t]he dismissed tort claims are not duplicative of plaintiff's breach of contract cause of action"); *Wilder v Fresenius Med. Care Holdings, Inc.*, 215 AD3d 511, 513 (1st Dept 2023) (stating that "[t]hese claims also are not duplicative of previously dismissed claims"); *Sullivan v Harnisch*, 100 AD3d 513, 514 (1st Dept 2012) (holding that a claim was "not duplicative of dismissed claims").

Therefore, the branch of defendants' motion for summary judgment dismissing the second and third causes of action pursuant to CPLR § 3212 is denied.

THE FOURTH, FIFTH AND SIXTH CAUSES OF ACTION

The Court agrees with defendants that because plaintiff's breach of fiduciary duty, constructive trust, and equitable accounting claims each require the existence of a fiduciary relationship, which is not present on this Record, the fourth through sixth causes of action should be dismissed pursuant to CPLR § 3212.

Defendants' submissions demonstrate, *prima facie*, that the parties were not in a fiduciary relationship, and that plaintiff and Bonnem were introduced to one another by Dunne for the

purposes of potentially entering into an arm's length business transaction. *See* NYSCEF Doc. Nos. 128-178. In opposition, plaintiff's submissions reflect the aforementioned triable issues of fact regarding whether plaintiff performed uncompensated work for defendants' benefit, but his submissions do not demonstrate the presence of any fiduciary relationship among the parties. *See* NYSCEF Doc. Nos. 181-275.

Because claims for breach of fiduciary duty, constructive trust, and equitable accounting each require the existence of a fiduciary relationship, which does not exist in the type of "arm's-length business transaction involving sophisticated business people" at issue herein, the fourth, fifth and sixth causes of action are dismissed as a matter of law pursuant to CPLR § 3212. *See Guarino v North Country Mtge. Banking Corp.*, 79 AD3d 805, 807 (2d Dept 2010) (holding that "[t]he Supreme Court properly granted those branches of the defendants' cross motion which were for summary judgment dismissing the causes of action to recover damages for breach of fiduciary duty . . . and to impose a constructive trust" where "defendants established . . . that the Ferraras owed no fiduciary duty to Guarino, a necessary element of each of those causes of action"); *see also Metropolitan Bank & Trust Co. v Lopez*, 189 AD3d 443, 446 (1st Dept 2020) (stating that "[t]he cause of action for an equitable

accounting was correctly dismissed" and noting that "[t]he elements [thereof] include a fiduciary or confidential relationship"); *County of Nassau v Expedia, Inc.*, 120 AD3d 1178, 1181 (2d Dept 2014) (finding that "the plaintiff failed to adequately plead a cause of action against the appellants to impose a constructive trust, as it failed to allege the existence of a confidential or fiduciary relationship with them").

CONCLUSION

Accordingly, based upon the foregoing, defendants' motion for summary judgment dismissing the Amended Complaint is granted to the extent that plaintiff's first, fourth, fifth and sixth causes of action are dismissed as a matter of law pursuant to CPLR § 3212. Defendants' motion is otherwise denied, and plaintiff's second and third causes of action shall proceed to trial.

The foregoing constitutes the decision and order of the Court.[8]

Dated: White Plains, New York
May 1, 2025

HON. LINDA S. JAMIESON
Justice of the Supreme Court

[8] All other arguments raised on this motion and all materials submitted by the parties in connection therewith have been considered by this Court, notwithstanding the specific absence of reference thereto.

To: Abrams Fensterman, LLP
Attorneys for Plaintiff
1 MetroTech Center, Suite 1701
Brooklyn, New York 11201

Latham & Watkins LLP
Attorneys for Defendants
1271 Avenue of the Americas
New York, New York 10020