

Harounian v Harounian

2025 NY Slip Op 33313(U)

September 5, 2025

Supreme Court, New York County

Docket Number: Index No. 450615/2019

Judge: Joel M. Cohen

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SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK: COMMERCIAL DIVISION PART 03M

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JACOB HAROUNIAN, JAM REALTY NYC LLC, UNITED SEED LLC, UNITED FLATIRON LLC, UNITED SQUARE LLC, UNITED NATIONWIDE REALTY LLC, UNITED WEST LLC, UNITED HAY LLC, 3M PROPERTIES LLC, UNITED CHELSEA LLC, UNITED VILLAGE LLC, UNITED EAST LLC,

Plaintiffs,

- v -

MARK HAROUNIAN, JAM REALTY NYC LLC, UNITED SEED LLC, UNITED FLATIRON LLC, UNITED SQUARE LLC, UNITED NATIONWIDE REALTY LLC, UNITED GREENWICH LLC, JACOB NY HOLDINGS LLC, JACOB NY HOLDINGS LTD., 172 MULBERRY REALTY LLC, 163 CHRYSTIE REALTY LLC, UNITED WEST LLC, UNITED HAY LLC, 3M PROPERTIES LLC, UNITED CHELSEA LLC, UNITED VILLAGE LLC, UNITED EAST LLC,

Defendants.

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INDEX NO.	450615/2019
MOTION DATE	09/27/2024, 09/28/2024
MOTION SEQ. NO.	001 002
DECISION + ORDER ON MOTION	

HON. JOEL M. COHEN:

The following e-filed documents, listed by NYSCEF document number (Motion 001) 204, 205, 206, 207, 208, 209, 210, 211, 212, 213, 214, 215, 216, 217, 218, 219, 220, 221, 222, 223, 224, 225, 226, 227, 228, 229, 230, 231, 232, 233, 234, 235, 236, 237, 238, 239, 240, 241, 242, 243, 244, 245, 246, 247, 248, 249, 250, 251, 252, 253, 254, 255, 256, 257, 258, 259, 260, 261, 262, 263, 264, 265, 266, 267, 268, 269, 270, 271, 272, 273, 274, 275, 276, 277, 278, 279, 280, 281, 282, 283, 284, 285, 286, 287, 288, 289, 290, 291, 292, 293, 294, 295, 296, 297, 298, 299, 300, 301, 302, 303, 304, 305, 306, 307, 308, 309, 310, 311, 312, 313, 314, 315, 316, 317, 318, 319, 320, 321, 322, 323, 324, 325, 326, 327, 328, 329, 330, 331, 332, 333, 334, 335, 336, 337, 338, 339, 340, 341, 342, 542, 543, 544, 545, 546, 547, 548, 549, 550, 551, 556, 557, 558, 559, 560, 561, 562, 563, 566

were read on this motion for PARTIAL SUMMARY JUDGMENT.

The following e-filed documents, listed by NYSCEF document number (Motion 002) 343, 344, 345, 346, 347, 348, 349, 350, 351, 352, 353, 354, 355, 356, 357, 358, 359, 360, 361, 362, 363, 364, 365, 366, 367, 368, 369, 370, 371, 372, 373, 374, 375, 376, 377, 378, 379, 380, 381, 382, 383, 384, 385, 386, 387, 388, 389, 390, 391, 392, 393, 394, 395, 396, 397, 398, 399, 400, 401, 402, 403, 404, 405, 406, 407, 408, 409, 410, 411, 412, 413, 414, 415, 416, 417, 418, 419, 420, 421, 422, 423, 424, 425, 426, 427, 428, 429, 430, 431, 432, 433, 434, 435, 436, 437, 438, 439, 440, 441, 442, 443, 444, 445, 446, 447, 448, 449, 450, 451, 452, 453, 454, 455, 456, 457, 458, 459, 460, 461, 462, 463, 464, 465, 466, 467, 468, 469, 470, 471, 472, 473, 474, 475, 476, 477, 478, 479, 480, 481, 482, 483, 484, 485, 486, 487, 488, 489, 490, 491, 492, 493, 494, 495, 496, 497, 498, 499, 500, 501, 502, 503, 504, 505, 506, 507, 508, 509, 510, 511, 512, 513, 514, 515, 516, 517, 518, 519, 520, 521, 522, 523, 524, 525, 526, 527, 528, 529, 530, 531, 532, 533, 534, 535, 536, 537, 538, 539, 540, 541, 552, 553, 554, 555

were read on this motion for

SUMMARY JUDGMENT

Defendants move for summary judgment on Plaintiff Jacob Harounian’s (“Jacob”) claims for constructive trusts, unjust enrichment, and breach of fiduciary duty, both direct and derivative. Jacob seeks summary judgment on his direct claim for breach of fiduciary duty against Defendant Mark Harounian (“Mark”), his derivative claims for breach of fiduciary duty and unjust enrichment against Defendants JAM Realty NYC, LLC, United Seed, LLC, United Flatiron, LLC, and United Square, LLC, and his claims for constructive trusts against 172 Mulberry Realty, LLC, and 163 Chrystie, LLC. Jacob also seeks summary judgment dismissing the crossclaims for contribution, negligent misrepresentation, unjust enrichment, and conversion asserted against him by Defendants Mark Harounian, JAM Realty NYC, LLC and United Seed, LLC in a separate action, *Homapour et al. v 3M Properties, LLC et al.* (Index No. 653795/2015 [“Homapour Case”]), which has been consolidated with this action for trial.

The Court assumes familiarity with the factual background of this case, which is recited in more detail in this Court’s recent decision in the Homapour Case, (NYSCEF 1858 in Index No. 653795/2019). For the reasons discussed below, each motion is **granted in part**.

DISCUSSION

Summary judgment is a drastic remedy which will be granted only when the movant has established that there are no triable issues of fact (*Alvarez v Prospect Hosp.*, 68 NY2d 320, 324 [1986]). To prevail, the party seeking summary judgment must make a prima facie showing of entitlement to judgment as a matter of law based on evidentiary proof in admissible form (*id.*; *see also Zuckerman v City of New York*, 49 NY2d 557 [1980]). If the moving party meets its burden, the opposing party “must produce evidentiary proof in admissible form sufficient to require a trial of material questions of fact on which he rests his claim or must demonstrate

acceptable excuse for his failure to meet the requirement of tender in admissible form; mere conclusions, expressions of hope or unsubstantiated or assertions are insufficient” (*Zuckerman*, 49 NY2d at 562).

I. Breach of Fiduciary Duty

Jacob adopts the arguments set forth by his daughter, Mehrnaz Homapour, the plaintiff in the Homapour Case (“Homapour”) in her motion for summary judgment (*see* NYSCEF 1386, 1814 in Index. No. 653795/2015). This Court denied Mehrnaz’s motion as it relates to the claim against Mark for breach of fiduciary duty, as there are disputes of material fact as to whether Mark’s use of certain family-owned LLC funds constitutes “reasonable compensation” as provided for in several family-owned LLC operating agreements or was otherwise part of a course of conduct approved or ratified by Jacob and the other LLC members (*see* NYSCEF 1858 in Index. No. 653795/2015 at 17-19). Jacob’s motion is denied as to his claims for the same reasons.

Defendants seek to dismiss Jacob’s direct breach of fiduciary duty claims on the ground that Jacob admitted he was not entitled to distribution from the family-owned LLCs for anything other than tax payments. Jacob, however, is not challenging the fact that he never received distributions per se. Rather, Jacob argues that Mark’s use of family-owned LLC funds were wrongful distributions, not reasonable compensation, and that Jacob is entitled to a commensurate distribution as a result. Defendants’ motion is denied as to the direct claim.

Regarding Jacob’s derivative claim, Defendants seek partial summary judgment for aspects of this claim that are based on conduct that occurred outside of the three-year statute of repose for challenging LLC distributions under LLCL § 508(c). As discussed in this Court’s decision in the Homapour Case, Jacob’s second cause of action is not a challenge to a wrongful

distribution from an LLC (*see* NYSCEF 1858 in Index No. 653795/2015 at 18-19). Accordingly, Defendants' motion is denied as to the derivative breach of fiduciary duty claim as well.

II. Unjust Enrichment

Jacob brings a fourth cause of action for unjust enrichment derivatively on behalf of JAM Realty NYC, LLC, United Seed, LLC, United Flatiron, LLC, and United Square, LLC based on Mark's use of their funds for Mark's personal expenses and purchase of real property owned by LLCs in which Jacob does not have an interest. Jacob adopts Mehrnaz's arguments with respect to these claims.

The operating agreements for each of these LLCs provide that Mark "shall be entitled to reasonable compensation for services" to each LLC (NYSCEF 1769 in Index No. 653795/2015 [Homapour's Response to Mark Harounian Defendants' Statement of Material Facts] ¶¶ 79, 82)). Accordingly, Mark's personal use of Family LLC funds is governed by contract with respect to those Family LLCs. "The existence of a valid and enforceable written contract governing a particular subject matter ordinarily precludes recovery in quasi contract for events arising out of the same subject matter" (*Clark-Fitzpatrick, Inc. v Long Is. R. Co.*, 70 NY2d 382, 388 [1987]). Summary judgment is granted to Defendants dismissing the unjust enrichment claim. For the same reason, Jacob's corresponding motion is denied.

III. Constructive Trust Claims

Jacob's ninth cause of action against Mark seeks to impose a constructive trust on behalf of JAM Realty NYC, LLC over the property and assets of United Greenwich, LLC. The JAM Realty NYC, LLC operating agreement, however, provides that the sole remedy for misconduct by a manager is money damages (NYSCEF 238 § 8.6 [c]). Accordingly, Defendants' motion is granted dismissing this claim. For the same reason, Jacob's corresponding motion is denied.

Jacob's eighth cause of action seeks to impose a constructive trust over the real property located at 29 East 32nd Street. As discussed in this Court's decision in the Homapour Case, Defendants' motion is granted dismissing this claim as untimely (*see* NYSCEF 1858 in Index No. 653795/2015 at 12-13). For the same reason, Jacob's corresponding motion is denied.

Jacob's tenth cause of action seeks to impose a constructive trust over the real property located at 163 Chrystie Street and 172 Mulberry Street. Jacob adopts Mehrnaz's arguments as it relates to this claim. Mehrnaz's primary contentions regarding these properties are that Mark took funds from JAM Realty NYC, LLC to purchase those buildings on behalf of LLCs owned by Mark and his children (*see* NYSCEF 1723 in Index No. 653795/2015 [Mark Harounian Defendants' Response to Plaintiff's Statement of Material Facts] ¶¶ 40-41). As discussed above, the JAM Realty NYC, LLC operating agreement bars the relief sought here.

However, Mehrnaz alleges that Mark also used funds from other Family LLCs—without specifying which ones—to *renovate* these properties, as Mark admitted at his deposition (*see* NYSCEF 1166 in Index No. 653795/2015 at 26:8-13, 31:2-3). “[A] constructive trust is the formula through which the conscience of equity finds expression. When property has been *acquired* in such circumstances that the holder of the legal title may not in good conscience retain the beneficial interest, equity converts him into a trustee” (*Simonds v Simonds*, 45 NY2d 233, 241 [1978] [emphasis added, quotations omitted]). To the extent that Mark performed renovations through wrongful use of funds from the few family-owned LLCs whose operating agreements do *not* bar equitable relief, such conduct may be remedied by money damages in connection with Jacob's breach of fiduciary duty claims. The renovations alone are not a basis to impose a constructive trust. Accordingly, Defendants' motion is granted dismissing the constructive trust claims. For the same reason, Jacob's corresponding motion is denied.

IV. Defendants' Crossclaims against Jacob

Jacob's motion is directed in part at claims brought against him in the Homapour Case. This action and the Homapour Case are maintained under distinct index numbers and are consolidated *for trial*. Jacob's motion for summary judgment concerning the crossclaims is denied without prejudice to Jacob seeking the same relief in the Homapour Case, where these claims reside.

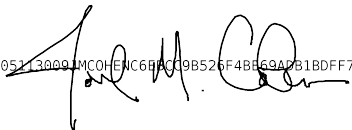
Therefore, it is

ORDERED that Defendants' motion for partial summary judgment is **granted in part**, dismissing Plaintiff's claims for unjust enrichment and constructive trusts, and otherwise **denied**; it is further

ORDERED that Plaintiff Jacob Harounian's motion for summary judgment is **denied** with respect to his claims in this action, and **denied without prejudice** insofar as the motion is directed at crossclaims that are asserted in the Homapour Case (Index No. 653795/2015); and it is further

ORDERED that the parties appear for an initial pretrial conference via Teams on September 26, 2025 at 2:30 p.m. to determine scheduling and logistics for trial.

This constitutes the decision and order of the Court.

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JOEL M. COHEN, J.S.C.

9/5/2025
DATE

CHECK ONE:

CASE DISPOSED
 GRANTED DENIED

NON-FINAL DISPOSITION
 GRANTED IN PART

OTHER

APPLICATION:

SETTLE ORDER

SUBMIT ORDER

CHECK IF APPROPRIATE:

INCLUDES TRANSFER/REASSIGN

FIDUCIARY APPOINTMENT

REFERENCE